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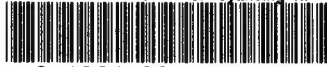
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PRIDEAUX'S  
PRECEDENTS



IN  
CONVEYANCING;

WITH  
*Dissertations*

ON ITS  
LAW AND PRACTICE.

—O—  
NINTH EDITION.

BY  
FREDERICK PRIDEAUX,  
LATE PROFESSOR OF THE LAW OF REAL AND PERSONAL PROPERTY TO THE INNS OF COURT,  
AND  
JOHN WHITCOMBE,  
BOTH OF LINCOLN'S INN, ESQRS., BARRISTERS-AT-LAW.

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## ERRATA AND ADDENDA.

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- Page 19, line 13, after "not" add "to."
- Page 19, note (f), add "but this decision was disapproved of in *Hampshire v. Wickens*, L. R. 7 C. D. 555."
- Page 43, line 12, before "hereditaments" add "said."
- Page 58, line 2, for "accepted" read "excepted."
- Page 69, landlord's covenant No. 5, should be omitted from Part 6 and inserted in Part 5 as a tenant's covenant No. 14.
- Page 70, note (i), three lines from bottom, omit "and."
- Page 77, line 21, for "assign" read "sign."
- Page 95, line 28, for "course" read "cause."
- Page 131, fourth marginal note, for "results" read "receipts."
- Page 136, note (j), add "and see *Re Wedderburn's Trusts*, L. R. 9 C. D. 112."
- Page 137, note (u), add "but see *Lewis v. Nobbs*, L. R. 8 C. D., 591."
- Page 147, line 2, after "Act" add "nor can an Assurance Society pay the policy money into Court; *Matthew v. Northern Assurance Society*, L. R. 9 C. D. 80."
- Page 170, note (y), add "but see *Croughton's Trusts*, L. R. 8 C. D. 460."
- Page 172, note (r), for "sect. 9" read "sect. 4."
- ✧ Page 180, add "By the Matrimonial Causes Act, 1878 (41 Vict. c. 19, sect. 4), it is provided that if a husband shall be convicted summarily or otherwise of an aggravated assault upon his wife the Court or magistrate may, if satisfied that her future safety is in peril, order that the wife shall be no longer bound to cohabit with her husband; and such order is to have the force and effect of a decree of judicial separation on the ground of cruelty."
- Page 186, add to note (u) "*In re Michell's Trusts*, L. R. 9 C. D. 5."
- Page 242, note (a), for "at the end of paragraph 6" read "in the middle of paragraph 7."
- Page 258, line 28, for "her" read "his."

- Page 260, line 13, after "and" add "either."
- Page 261, line 19, for "he" read "she."
- Page 272, omit from "R. B." in line 8 to "part" in line 10 inclusive; and in line 12, for "fifth" read "third"; also omit 3rd and 4th marginal notes.
- Page 302, 7 lines from bottom, omit "the said C. D."
- Page 325, line 15, for "the uses" read "such uses."
- Page 364, 3 lines from bottom, for "to" read "of."
- Page 365, line 26, for "a real estate" read "the real estate."
- Page 366, line 20, after "gift" add "by."
- Page 368, 2 lines from bottom, for "heirs" read "executors."
- Page 396, note (x), the decision of Hall, V.-C., in *Attree v. Hawe*, has been reversed by the Court of Appeal, W. N. 1878, p. 160.
- Page 409, line 21, for "vested" read "vests."
- Page 416, line 16, for "7th" read "4th."
- Page 448, lines 21, 22, omit "maintenance, accumulation and."
- Page 462, 6 lines from bottom, for "that" read "thereof."
- Page 479, 11 lines from bottom, for "surplus" read "corpus."
- Page 513, line 2, omit "or name."  
line 9, omit "or his."  
7 lines from bottom, omit "or him."
- Page 514, 3 lines from bottom, omit "or his."
- Page 525, line 26, omit "or owner."
- Page 551, line 1, for "assurance" read "assurances."
- Page 587, line 2, before "X. Y." add "death of."
- Page 639, 6 lines from bottom, after "article 22" add "with interest thereon after the rate of £5 per cent. per annum, computed from the same — day of — up to the day of his decease."
- Page 654, 3 lines from bottom, after "and" add "the said C. D. and E. F."
- Page 692, line 13, omit "heirs."
- Page 737, note, 9 lines from bottom, for "31 & 32 Vict." read "32 & 33 Vict."



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## LEASES.

It is proposed in this Dissertation to consider :—I. What leases are required to be by deed, and what leases or tenancies may be created by a mere writing or by parol. II. The mutual rights and obligations of landlord and tenant in respect of rent, repairs, fixtures, the lessor's title, and quiet enjoyment by the lessee. III. By what modes, otherwise than by forfeiture, a tenancy may be determined ; and the rights of the parties at the determination thereof. IV. The covenants usually inserted in leases, the condition of re-entry, and the cases in which equity will relieve against a forfeiture under such condition. V. Apportionment of rent and other periodical payments. VI. Leases under powers. VII. Stamps on leases.

I. *What leases are required to be by deed, and what leases or tenancies may be created by a mere writing or by parol.*

By the Statute of Frauds (a) it is enacted, that “all leases, estates, interests of freehold, or terms of years, or any uncertain interests of, in, to, or out of any messuages, manors, lands, tenements or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing and signed by the parties so making or creating the same or their agents thereunto lawfully authorised by writing, shall have the effect of leases or estates at will, any consideration for making any such parol leases or estates notwithstanding.” But leases

Statute of  
Frauds.

(a) 29 Car. 2, c. 3, sect. 1.



8 & 9 Vict.  
c. 106.

not exceeding three years whereupon the reserved rent amounts to two-thirds of the full improved value are excepted (b). By the 8 & 9 Vict. c. 106, sect. 3, it is enacted, that "a lease required by law to be in writing of any tenements or hereditaments made after the 1st of October, 1845, shall be void at law unless made by deed."

Result of enactments that leases, except for not more than three years, must be by deed.

Instrument void as a lease may be sued on as an agreement.

The result of the above enactments is that all leases (other than leases for a term not exceeding three years whereupon the reserved rent amounts to two-thirds of the full improved value) must be made by deed.

An instrument not under seal, which before the Act of Victoria would have operated as an actual demise, and which is therefore rendered void at law by that Act, may be sued on in equity as an agreement for a lease, and specific performance will be decreed (c), and in the meantime if the intended lessee enters and pays rent, he will become tenant from year to year upon the terms of the instrument (d).

Effect of agreement by landlord not to turn out tenant so long as he pays the rent.

Sometimes an agreement purporting to create a yearly tenancy contains a clause to the effect that the landlord will not turn out the tenant so long as he pays the rent. It is clear that, having regard to the Acts above referred to, such an agreement cannot create a present interest beyond a yearly tenancy (e); but it may operate as an agreement for a lease enforceable under the equitable jurisdiction of the Court. Thus in *Brown v. Warner* (f), an agreement of this nature was considered by Lord Eldon as a valid agreement for a future lease; and in a more recent case, where the landlord was himself only a lessee for eight years, V.-C. Malins treated the tenant as entitled in equity under such an agreement to remain in possession during the continuance of the landlord's interest (g).

Tenancy from year to year, how created.

A tenancy from year to year may be created by an express agreement either in writing or by parol to that effect, or it may arise by implication. Thus if one lets

(b) Sect. 2.

(c) *Parker v. Taswell*, 2 De G. & J. 559.

(d) *Tress v. Savage*, 4 E. & B. 36; 23 L. J. Q. B. 339; *Lee v. Smith*, 9 Exch. R. 662; 23 L. J. Ex. 198. See also *Drury v. Mac-*

*namara*, 5 El. & Bl. 612.

(e) *Doe d. Warner v. Brown*, 8 East. 165; *Wood v. Beard*, L. R. 2 Ex. D. 30.

(f) 14 Ves. 156.

(g) *Re King's Leasehold Estates*, L. R. 16 Eq. 521.

lands to another at an annual rent without any express provision as to the length or terms of the tenancy, the latter becomes tenant from year to year.

If a tenant holds over after the expiration of his lease, though only for a single quarter, he is at first a mere tenant at sufferance, but if the landlord subsequently receives rent the tenant becomes tenant from year to year, subject to such covenants and conditions in the lease as are applicable to that species of estate (*h*), and the same rule applies where a person takes possession and pays rent under an agreement for a future lease (*i*), or under an instrument purporting to be a demise for years, but which is invalid as such, as *e.g.*, a demise by a corporation not under seal (*k*).

Tenant holding over.

A tenancy from year to year is a tenancy for one year certain, and so from year to year, and may, except in the case of holdings subject to the Agricultural Holdings Act, 1875, be determined at the end of the first or any subsequent year by either party giving to the other a half-year's notice to quit, such notice to expire at the time of year when the tenancy commenced. As regards holdings subject to the above Act, a year's notice expiring with a year of tenancy is substituted for the half-year's notice (*l*).

Nature of a tenancy from year to year.

A tenancy at will is where a man lets land to another and either party may put an end to the tenancy at pleasure.

Tenancy at will.

A mortgagor of land in his own occupation is a tenant at will to the mortgagee, and any person who subsequently to the mortgage is let into the occupation of the property by the mortgagor is in the same position (*m*). If, at the date of the mortgage, the land is in the occupation of a tenant, the mortgagee takes it subject to the tenancy, whether it be from year to year or otherwise, and if (as is usual) the mortgagor continues to receive the rent, he does so under an implied authority from

Mortgagor in possession, the nature of his tenancy.

(*h*) *Bishop v. Howard*, 2 B. & Cr. 100; *Digby v. Atkinson*, 4 Camp. 275; *Thomas v. Packer*, 21 Jur. 143; 26 L. J. Ex. 207; *Hyatt v. Griffith*, 17 Q. B. 505.

(*i*) *Doe d. Thompson v. Amey*, 12 Ad. & El. 476.

(*k*) *Wood v. Tate*, 2 Bos. & Pull. N. S. 247. *Ecclesiastical Commissioners v. Merral*, L. R. 4 Ex. 162.

(*l*) Sect. 51.

(*m*) *Keech v. Hall*, Doug. 21; *Lows v. Telford*, L. R. 1 App. Cas. 414.

the mortgagee, which authority the mortgagor may at any time countermand by notice to the tenant (*n*).

II. *The mutual rights and obligations of landlord and tenant in respect of rent, repairs, fixtures, the lessor's title, and quiet enjoyment by the lessee.*

Power of distress incident to a rent service at common law; additional powers conferred by statutes of Anne and Geo. 2.

The rent reserved on a lease is a rent service to which a power of distress is incident by common law; and by the 8 Ann. c. 14, ss. 6 & 7, the landlord is empowered to distrain for rent reserved on leases for life, for years, or at will, within six calendar months after the expiration of the lease, provided his title continues and the tenant is in possession at the time of the distress, and by 3 & 4 Wm. 4, c. 42, s. 37, the same power of distress is continued to the executors or administrators of a deceased lessor or landlord. The 8 Ann. c. 14, s. 1, provides for the benefit of landlords who may be entitled to arrears of rent, that no goods shall be taken in execution before payment to them of one year's rent, or any less amount which may be due. But sec. 1 does not apply, where the tenancy has been determined, although the six months mentioned in sec. 6 may still be subsisting (*o*).

By the 11 Geo. 2, c. 19, s. 1, it is enacted that if any tenant, &c., shall fraudulently or clandestinely convey away, or carry off from the premises, his goods and chattels, to prevent the landlord from distraining the same for arrears of rent, the landlord may, within the space of thirty days after such conveying or carrying away, seize the goods and chattels wherever the same shall be found, as a distress for the said arrears of rent, and other powers are given to landlords to seize goods fraudulently concealed or removed (*p*).

Limitation as to arrears of rent.

By the 3 & 4 Wm. 4, c. 27, s. 42, it is enacted, that no arrears of rent or any damages in respect of such arrears shall be recovered but within six years next after the same have become due, or next after an acknowledgment in writing of the same to the person entitled thereto or his agent. It is questionable whether

(*n*) *Moss v. Gallimore*, Dougl. 266;  
*Trent v. Hunt*, 22 L. J. (N. S.) Ex. 318.

(*o*) *Cox v. Leigh*, L. R. 9 Q. B. 333.

(*p*) Sects. 1—10.

this section would have applied to rents secured by specialty, but the 3 & 4 Wm. 4, c. 42, s. 3, now distinctly allows a period of twenty years for all actions of debt for rent reserved upon leases, and all actions of covenant or debt by specialty. If there has been any intermediate acknowledgment, the period of limitation will run from the time of such acknowledgment. An action may therefore be brought to recover rent reserved on a lease by deed at any time within twenty years after the rent accrued due, or the last acknowledgment of its being due (*q*). The Real Property Limitation Act, 1874 (*r*), does not seem to make any alteration in this respect.

By a recent Act (*s*), the goods of lodgers are protected against distresses for rent due to the superior landlord.

*Lodgers' goods,*

In the absence of express stipulation, a tenant from year to year is bound to keep the premises in tenantable repair, *i.e.*, he must keep the premises wind and water tight, but he is under no obligation to do substantial repairs (*t*). In the case of a lease for years, the obligation to repair depends upon the terms of the lease. In *Gutteridge v. Munyard* (*u*), it was held that where an old house is demised with the usual covenants to repair and give up in repair, it is not meant that the house shall be restored in an improved state, but that the lessee must keep it in the state in which it was at the commencement of the lease by the timely expenditure of money and care. And in another case, it was held that on an action for breach of such a covenant, the jury may consider the condition of the premises, *i.e.*, whether they were old or new at the time of the demise (*v*). It must not, however, be concluded from the above-mentioned cases that it is sufficient for a lessee to keep the premises in the same state of repair in which they were at the commencement of the lease; all that is meant is, that the class or description of the house may be taken

*In the absence of stipulation tenant not bound to do substantial repairs.*

*What repairs must be done under ordinary lessee's covenant*

(*q*) *Paget v. Foley*, 2 Bing. N. C. 239; *Leach v. Thomas*, 7 *ib.* 327.  
679.

(*r*) 37 & 38 Vict. c. 57.

(*s*) 34 & 35 Vict. c. 79.

(*t*) *Ferguson v. —*, 2 Esp. 590;  
*Anworth v. Johnson*, 5 Car. & P.

(*u*) 1 M. & Rob. 334.

(*v*) *Stanley v. Towgood*, 3 Bing. N. C. 4; 6 L. J. (N. S.) C. P. 129;  
*Brown v. Trumper*, 26 Beav. 11.

into consideration, as whether it is an old or a new house, and it must be kept and delivered up in good repair with reference to the class to which it belongs (*x*). The rule is one very difficult of application.

Landlord not bound to do substantial repairs.

A tenant who is under no obligation to do substantial repairs, cannot require the landlord to do them, nor is it any defence to an action by the landlord for rent, that the house is uninhabitable for want of substantial repairs (*y*), or by reason of its being infested with noxious insects, or for any other reason, there being no implied condition in a demise of an unfurnished fabric of a house that it is in a reasonably fit state and condition for habitation (*z*). But a different rule applies to a *furnished* house; in which case there is an implied condition that it is fit for occupation, and the tenant may rescind the contract on the ground that it is infested by bugs, or unwholesome for want of proper drainage (*a*).

House let furnished must be fit for habitation.

Liability of tenant in case of fire.

As regards destruction by fire it is provided by the statute 14 Geo. 3, c. 78, s. 86, that no action, suit, or process shall be had or prosecuted against any person in whose house or chamber any fire shall *accidentally* begin, or any recompense be made by such person for any damage suffered or occasioned thereby, but agreements between landlord and tenant are excepted. In the absence, therefore, of any special stipulation, the lessee is not bound to rebuild a house accidentally burnt down, but if he enters into a general covenant to repair, without any exception, he is liable to restore any house or buildings which may be destroyed by fire, tempest, lightning, or any other accident (*b*). It should be borne in mind also that a fire caused by negligence has been held not to be accidental within the meaning of the above enactment (*c*), and bearing in mind how often fires are the result of carelessness on the part of servants, a prudent tenant will either insure himself or see that his landlord does so.

In absence of stipulation, lessee not bound to rebuild in case of fire, but he must do so under general covenant to repair.

(*x*) *Payne v. Haine*, 16 Mees. & Wels 541; 16 L. J. Ex. 130; *Burdett v. Withers*, 7 Ad. & El. 136; 6 L. J. (N. S.) K. B. 219; *Easton v. Pratt*, 33 L. J. Ex. 233.

(*y*) *Arden v. Pullen*, 10 M. & W. 321; 11 L. J. (N. S.) Ex. 359; *Gott v. Gandy*, 23 L. J. Q. B. 1.

(*z*) *Hart v. Windsor*, 12 M. & W. 61.

(*a*) *Smith v. Marrable*, 11 M & W. 5; *Wilson v. Finch Hatton*, L. R. 2 Ex. D. 336.

(*b*) 2 Saund. Rep. by Williams, 422 n.; *Pym v. Blackburn*, 3 Ves. 34.

(*c*) *Filiter v. Phippard*, 11 Q. B. 347, 17 L. J. Q. B. 89.

Where there is no obligation on either party to insure, the lessee remains liable for his rent although the house has been burnt down (*d*), and it has been held that he has no equity to compel the lessor to expend the money received from an insurance office in rebuilding (*e*). But these decisions must be taken in connection with sect. 83 of 14 Geo. 3, c. 78, which authorizes and requires directors of insurance offices, on the request of *any person interested* in or entitled unto any houses or buildings which may be burnt down or damaged by fire, to cause the insurance money to be laid out in re-building (*f*). It would seem, therefore, that if in the above mentioned cases the lessee had required the directors of the insurance company before they paid over the money to the lessor, to apply it in re-building, they would have been bound to do so.

In absence of stipulation lessee liable to rent although house has been burnt down.

The general rule as to fixtures is that the tenant, if he has affixed anything to the freehold during his term, cannot again remove it without the consent of the landlord. But in very early times an exception to the general rule was allowed in the case of fixtures set up for the purposes of trade (*g*). An exception has also been allowed in the case of fixtures set up for purposes of ornament or convenience; as, for example, marble or other ornamental chimney-pieces, marble slabs, grates, or stoves, or the like, provided that they can be separated from the freehold without any material injury (*h*).

Fixtures, general rule as to.

Exception in case of trade and ornamental fixtures.

By a recent statute (*i*), important rights have been conferred on tenants with regard to agricultural fixtures. It is thereby provided, "that if any tenant of a farm or lands shall, *with the consent in writing of the landlord*, at his own cost and expense, erect any farm-building, either detached or otherwise, or put up any

Agricultural fixtures.

(*d*) *Belfour v. Weston*, 1 T. R. 310, 710; *Holzapffel v. Baker*, 18 Ves. 115.

(*e*) *Leeds v. Cheetham*, 1 Sim. 146; *Loft v. Dennis*, 28 L. J. Q. B. 169. The case of *Steele v. Right*, cited in 1 T. R. 708, and the dictum in *Brown v. Quilter*, Amb. 619, contrary to the statement in the text, must be considered to be overruled.

(*f*) It has been held that this provision is a general enactment, and not limited in its operation to the metro-

politan districts. *Ex parte Goreley*, 34 L. J. Bankruptcy, 1.

(*g*) *Poole's case*, 1 Salk. 368; *Lawton v. Lawton*, 3 Atk. 13; *Dean v. Allaby*, 3 Esp. 11; *Fitzherbert v. Shaw*, 1 H. Bl. 528.

(*h*) See *Buckland v. Butterfield*, 2 B. & B. 75. See generally on the subject of fixtures, *Amos and Ferard* on fixtures; also *Elwes v. Mawe*, 2 Smith, L. C. 99.

(*i*) 14 & 15 Vict. c. 25, s. 3.

other building, engine, or machinery either for agricultural purposes or for the purposes of trade and agriculture (which shall not have been erected or put up in pursuance of some obligation in that behalf), then all such buildings, engines, and machinery, shall be the property of the tenant, and shall be removable by him, notwithstanding the same may consist of separate buildings, or that the same, or any part thereof, may be built in or permanently fixed to the soil, so as the tenant making any such removal do not in anywise injure the land or buildings belonging to the landlord, or otherwise do put the same in like plight and condition, or as good plight and condition as the same were in before the erection of anything so removed : Provided, nevertheless, that no tenant shall be entitled to remove any such matter or thing as aforesaid, without first giving to the landlord or his agent one month's previous notice in writing of his intention so to do, and thereupon it shall be lawful for the landlord, or his agent on his authority, to elect to purchase the matters and things so proposed to be removed, or any of them, and the right to remove the same shall thereby cease, and the same shall belong to the landlord ; and the value thereof shall be ascertained and determined by two referees, one to be chosen by each party, or by an umpire to be named by the referees, and shall be paid or allowed in account by the landlord who shall have so elected to purchase the same."

And the Agricultural Holdings Act, 1875, contains provisions conferring further rights on tenants with regard to fixtures in the case of holdings subject to that Act.

Tenant's  
fixtures,  
when they  
must be re-  
moved.

As a general rule the tenant must in the absence of any express stipulation on the subject, remove the fixtures during the term, otherwise they belong to the landlord (*j*) ; and this rule equally applies, when the tenancy is determined by the lessor re-entering for a breach of covenant (*k*). If, however, the tenant is allowed to remain in possession after the expiration of the term, it would seem that he may at any time while so remaining in possession remove fixtures which he might

(*j*) *Leader v. Homewood*, 5 C. B. (N. S.) 546, 27 L. J. C. P. 316.

(*k*) *Pugh v. Arton*, L. R. 8 Eq. 626.

have removed during the term (*l*). And in *Weeton v. Woodcock* (*m*), the rule was thus stated, that the tenant's right to remove fixtures continues during his original term, and during such further period of possession by him, as he holds the premises under a right still to consider himself a tenant (*n*).

Where there is an express covenant as to fixtures, the rights of the parties must of course depend on the terms of the covenant. Thus if it is provided that a lessee may remove the fixtures at the end of the term, he will be allowed a reasonable time for that purpose (*o*). On the other hand, if a lessee covenants to deliver up to the landlord, at the expiration of the term, fixtures, which, in the absence of such covenant, he might have removed, he thereby deprives himself of the right of removing them. In a case where the lessee covenanted to surrender the premises at the end of the term, "with all locks, keys, bars, bolts, marble and other chimney-pieces, foot paces, slabs, and other fixtures and articles which shall or may at any time during the term be fixed or fastened to the said demised premises or be thereto belonging," it was held that, as the specific articles were all of the nature of landlord's fixtures, the general words were to be interpreted as referring to articles *ejusdem generis*, and consequently that the covenant did not prevent the lessee from removing the tenant's fixtures (*p*). In another case a lessee covenanted to surrender the premises "with all wainscots, windows, &c., and other things which then were or at any time thereafter should be thereunto affixed or belonging (looking-glasses and furniture excepted), and together also with all sheds and other erections, buildings, and *improvements*, which should be erected, built, or made upon the said premises," and it was held that a plate-glass shop front, fixed in its place by wooden wedges, without screws, nails, or glue, and which could be removed without injury to the pre-

Covenants  
as to  
fixtures.

(*l*) *Penton v. Robart*, 2 East, 88.

(*m*) 7 M. & W. 14, 10 L. J. Ex. 153.

(*n*) See also *Greene v. Cole*, 2 Wms. Saund. 228; *Elwes v. Mawes*, 2 Smith, L. C. 117; *Ruffey v. Henderson*, 21 L. J. Q. B. 49; *Wilde v.*

*Waters*, 24 L. J. C. P. 193.

(*o*) *Stansfield v. Mayor of Portsmouth*, 27 L. J. C. P. 124; *Sumner v. Brownlow*, 34 L. J. Q. B. 130.

(*p*) *Bishop v. Elliott*, 11 Exch. R. 113; 24 L. J. Ex. 229.



mises, was within the covenant and could not be removed (*q*). Again, where a lessee covenanted to deliver up certain enumerated articles, "and other additions, improvements, and things" which should be anyways fixed or fastened upon the premises, Vice-Chancellor Wood thought that the general words could not be restricted, there being no assignable genus to which the enumerated articles belonged; and the Vice-Chancellor held that the lessee could not make a marketable title to articles in the nature of tenant's fixtures (*r*).

It is evident from the above cases, that if it is intended that the lessee shall have the ordinary rights of a tenant with regard to fixtures, care must be taken that the covenants of the lease are so framed as not to prejudice that right.

Lessee estopped from disputing his landlord's title, but may show that it has expired.

It is clearly settled that a tenant cannot, during his possession of the premises demised, dispute the title of the landlord under whom he entered (*s*), and this rule extends to an under-tenant (*t*). But a tenant may show that the landlord's title has expired (*u*), and he may do that (among other ways) by showing an eviction either actual or constructive. Thus, if a tenant is evicted by a title paramount to the lessor's, he may plead such eviction, and it would seem that it is not necessary that he should wait to be actually evicted, but that if he attorns to a party who has a right to evict him, and has actually commenced proceedings for that purpose, that is equivalent to an eviction (*x*). But a mere payment of rent to a party who threatens expulsion is not a constructive eviction (*y*).

Estoppel applicable to action for trespass.

The doctrine of estoppel is applicable in an action for trespass as well as for ejectment (*z*).

(*q*) *Burt v. Haslett*, 25 L. J. C. P. 295.

(*r*) *Wilson v. Whateley*, 1 J. & H. 436. See also *Dumerque v. Rumsey*, 33 L. J. Ex. 88.

(*s*) *Doe d. Knight v. Lady Smythe*, 4 M. & S. 347; *Wood v. Day*, 1 Moore, 389; *Co. Lit.* 47 b.; 1 Wms. Saund. 325; *Att.-Gen. v. Lord Hotham*, 3 Russ. 415; *Fleming v. Gooding*, 10 Bing. 549; *Francis v. Doe*, 4 M. & W. 331.

(*t*) *London and N. W. Railway Company v. West*, 2 L. R. C. P. 553.

(*u*) 1 Wms. Saund. 418; *Neave v. Moss*, 1 Bing. 360; *Hopcraft v. Keys*, 9 Bing. 613.

(*x*) *Mayor, &c., of Poole v. Whitt*, 15 M. & W. 571, 16 L. J. Ex. 229.

(*y*) *Delaney v. Fox*, 2 H. & N. 426; 26 L. J. C. P. 248.

(*z*) *Delaney v. Fox*, *ubi supra*.

Upon every demise, whether under seal or by parol, there is an implied contract on the part of the lessor for quiet enjoyment by the lessee absolutely, and consequently if a tenant is evicted by a superior title, or is distrained on for a rent-charge charged on the land by a predecessor in title of the lessor, or is otherwise disturbed in his possession, he may sue the lessor on such implied covenant (a). But if the lease contains an express covenant for quiet enjoyment, without any let or eviction from the lessor or any person claiming under him, such express covenant restrains the generality of the implied contract (b).

Implied  
covenant  
for quiet  
enjoyment.

Restrained  
by the  
express  
covenant.

### III. *By what modes, otherwise than by forfeiture, a tenancy may be determined; and the rights of the parties at the determination thereof.*

A lease for a term certain of course determines at the expiration of the term, and no notice to quit is necessary.

Lease for  
term deter-  
mines by  
effluxion of  
time.

It has been before observed that a tenancy from year to year continues until it is put an end to by a half-year's notice (or in cases within the Agricultural Holdings Act, 1875, a year's notice) to quit from one of the parties, and that such notice must expire at the period of the year at which the tenancy commenced. And if a tenancy from year to year has arisen from the tenant having held over on the expiration of his lease or original tenancy, the general rule is that the notice must expire at the period of the year at which the original term commenced (c). If the tenant dies during the tenancy, his executors have the same interest in the land as the deceased had, and the same notice to quit is therefore necessary (d).

Notice to  
quit neces-  
sary to  
determine  
tenancy  
from year  
to year.

Executors  
of tenant  
entitled to  
notice to  
quit.

(a) *Noke's Case*, 4 Co. R. 80 b.; *Hancock v. Caffyn*, 8 Bing. 358; *Bundy v. Cartwright*, 8 Ex. Rep. 913; *Hall v. City of London Brewery Company*, 31 L. J. Q. B. 257.

(b) *Noke's Case*, *ubi supra*; *Line v. Stephenson*, 4 Bing. N. C. 678; *Stanley v. Hayes*, 3 Q. B. 105; 11 L.

J. Q. B. 176; *Spencer v. Marriott*, 1 B. & C. 457; *Dennet v. Atherton*, L. R. 7 Q. B. 316.

(c) *Doe d. Collins v. Weller*, 7 T. R. 478; *Berry v. Lindley*, 3 M. & G. 498; *Kelly v. Patterson*, L. R. 9 C. P. 681.

(d) *Doe d. Shore v. Porter*, 3 T. R. 13.

A half-year's notice to quit is necessary whether the rent be reserved half-yearly or quarterly (e).

Notice to quit *primâ facie* waived by acceptance or demand of rent.

An acceptance of rent due after the expiration of a notice to quit is a *primâ facie* waiver of the notice, as it shows the intention of both parties to continue the tenancy; so also if the landlord distrains for or demands the rent, he *primâ facie* affirms the continuance of the tenancy; but the presumption of waiver may be rebutted, and it is a question for the jury, and not for the Court, whether, under the circumstances of the case, the notice has been waived (f).

Tenancy at will, how determined.

A tenancy at will may be determined at any time by the tenant delivering up possession, or by the landlord demanding such possession, and no notice to quit is necessary (g).

Surrender.

Express surrender must be in writing.

A lease or tenancy may be determined by surrender. By the Statute of Frauds (h), it is provided that "no leases, estates, or interests, either of freehold or terms of years, or any uncertain interest not being copyhold or customary interest, shall be assigned, granted, or surrendered unless by a deed, or note in writing, signed by the party so assigning, &c., or their agents thereunto lawfully authorized, or by act and operation of law."

Surrender at law.

A surrender by act and operation of law arises where a lessee accepts a new lease commencing immediately, or which is otherwise inconsistent with the continuance of the first lease. The acceptance of such new lease is an implied surrender of the first lease, and this is the case, although the second lease may be of shorter duration than the first (i). And a new letting to a third party, with the assent of the original tenant, has the same operation (k).

Leases may be renewed without surrender of underleases.

The stat. 4 Geo. 2, c. 28, s. 6, enables leases to be renewed without the surrender of any underleases derived out of the old lease, and saves to the lessee under the new lease and to the underlessees the same

(e) *Spirley v. Newman*, 1 Esp. 266.

(f) *Blyth v. Bennett*, 13 C. B. 178.

(g) *Right d. Lewis v. Beard*, 13 East, 210.

(h) 29 Car. 2, c. 3, s. 3.

(i) *Hughes v. Rowbotham*, Cr.

Eliz. 302.

(k) *Thomas v. Cook*, 2 B. & A. 119; *Graham v. Whichelo*, 1 C. & M. 188; *Macdonnell v. Pope*, 9 Hare, 705; *Davison v. Grant*, 1 H. & N. 744.

mutual rights and remedies as if the old lease had been still in existence.

By the same stat., s. 1, it is enacted that "if any tenant for life or lives, or years, holds over any lands, &c., after the determination of his estate, after demand made and notice in writing given, for delivering the possession thereof, by the landlord, &c., or his agent thereunto lawfully authorized, such tenant so holding over shall pay to the person so kept out of possession at the rate of double the yearly value of the lands so detained, for so long a time as the same shall be detained."

Tenant holding over after demand of possession to pay double annual value of premises.

And by stat. 11 Geo. 2, c. 19, s. 18, it is enacted that "in case any tenant shall give notice of his intention to quit the premises, and shall not accordingly deliver up the possession thereof at the time in such notice mentioned, the said tenant shall thenceforth pay to the landlord double the rent which he should otherwise have paid."

Tenant holding over after expiration of his notice to quit, to pay double rent.

To enable a landlord to recover double value under the 4 Geo. 2, c. 28, the holding over by the tenant must be contumacious. Thus in a recent case *A.*, a tenant of *B.*, after the death of *B.*, accepted a fresh term from his devisee. He afterwards found that the heir of *B.* disputed the will, and from the circumstances of the case he reasonably and *bonâ fide* believed that the devisee had no title, and that the land belonged to the heir-at-law. *A.* thereupon refused to pay rent to the devisee, who gave him notice to quit. As *A.* did not quit at the expiration of the notice, the devisee, who had established her title, brought an action against him for the double value for wilfully holding over. It was held that the action was not maintainable, as to come within the Act the holding over must be with the consciousness on the part of the tenant that he has no right to retain possession (*l*).

Holding over must be contumacious.

In a recent case, a landlord, after giving a yearly tenant notice to quit at the end of his year, agreed to let the land to *A.* from the end of the year, and informed the tenant that he had done so, but the tenant nevertheless held the premises over for another quarter. It was held that the landlord might recover against the

What damages may be recovered against tenant holding over.

tenant as damages the amount of the ordinary damages which he had had to pay in an action brought against him by A. for not giving him possession at the time agreed on and the cost of such action. It was also held that the fact of the landlord having received from the tenant rent for the quarter during which he held over did not preclude him from bringing the action (*m*).

Emble-  
ments.

Where a lease or tenancy is for an uncertain period, and determines after the crops are sown and before harvest, the tenant is as a general rule entitled to the crops, or (as they are usually called) to emblements, but if the lease is for a term certain, the tenant has no such right (in the absence of special custom), for it is his own fault if under such circumstances he sows the crops.

14 & 15 Vict.  
c. 25, s. 1.

It is now provided by the 14 & 15 Vict. c. 25, s. 1, that where a lease held by a tenant at rack rent shall determine by the death or the cesser of the estate of the landlord entitled for his life, or any other uncertain interest, instead of emblements the tenant shall continue to hold and occupy the lands until the expiration of the then current year of his tenancy, and shall then quit upon the terms of his lease or holding in the same manner as if such lease or tenancy were determined by effluxion of time or other lawful means during the continuance of the landlord's estate; and the succeeding landlord or owner is empowered to receive and recover from the tenant a due proportion of the rent for the period which shall have elapsed from the death or cesser of the estate of the previous landlord or owner.

The above Act applies to all tenancies in respect of which there may be a claim to emblements (*n*).

Law of  
emblements  
applies be-  
tween heir  
and execu-  
tors.

The right to emblements is not confined to the case of landlord and tenant. Thus if a tenant in fee dies before harvest the then growing crops will go to his executors as against the heir, but not as against a devisee (*o*). And where the estates of persons having only limited interests determine by their deaths before harvest,

(*m*) *Bramley v. Chesterton*, 2 C. B. (N. S.) 592; 27 L. J. C. P. 23.  
(*n*) *Haines v. Welch*, L. R. 4 C.

P. 91.

(*o*) *Cooper v. Woolfitt*, 2 H. & N. 122.

the emblements will go to their personal representatives (*p*).

The relative rights of landlord and tenant at the determination of the tenancy are considerably affected by the provisions of the Agricultural Holdings Act, 1875, which came into operation on the 14th February, 1876. The Act applies to all contracts of tenancy beginning after that day, except so far as the parties agree to exclude its operation, which they are allowed to do (*q*), and also to contracts of tenancy from year to year or at will current on that day, unless one of the parties have, within two months afterwards, given notice to the other of his desire that the Act shall not apply (*r*); but the operation of the Act is confined to holdings either wholly agricultural or wholly pastoral, or partly agricultural, and as to the residue pastoral, and being of the extent of at least two acres (*s*); and the Act applies whether the landlord is absolute owner or has a limited estate only, and although his interest is incumbered to any extent.

The Act entitles an outgoing tenant to compensation for improvements made by him during the tenancy, and contains various provisions defining what are to be deemed improvements, and the terms and conditions on which the compensation is to be assessed, including provisions for deductions in respect of breach of covenants or bad farming (*t*). The Act also contains provisions as to the removal of fixtures put up by the tenant (*u*).

It also provides that where a half-year's notice to quit expiring with a year of tenancy is by law necessary and sufficient for determination of a tenancy from year to year, a year's notice so expiring is to be necessary and sufficient (*x*).

The Act may be regarded as a legislative statement of what are fair and reasonable conditions between a landlord and outgoing tenant in the absence of any special agreement, but there are few cases in which the parties, and especially the landlord, could be advised to allow the Act its full application. Moreover, it is

(*p*) Tud. R. Prop. 61.

(*q*) Sec. 56.

(*r*) Sec. 57.

(*s*) Sec. 58.

(*t*) Secs. 5 to 50.

(*u*) Sec. 53.

(*x*) Sec. 51.

Agricultural Holdings Act, 1875.

Provisions of the Act as to compensation and fixtures.

A year's notice to quit substituted for a half year's.

Practice as to excluding the operation of the Act.

convenient that the contract of tenancy should state on the face of it the *whole* arrangement, without its being necessary to supplement it by reference to an Act of Parliament, which it is probable that neither party fully understands. Hence the general practice since the passing of the Act has been to exclude its operation, and to insert in the lease or agreement such provisions as regards the valuations to be made at the end of the tenancy, and all other matters as are in accordance with the custom of the country and adapted to the particular circumstances of the case. The precedents of agricultural leases and agreements in this collection are framed on this footing, and it will be found that the claims as to compensation at the end of the tenancy do not substantially differ from those in the Act.

IV. *The covenants usually inserted in leases, the condition of re-entry, and the cases in which equity will relieve against a forfeiture under such condition.*

What are  
the usual  
covenants in  
a lease.

Every well-drawn lease contains a covenant by the lessee to pay the rent; to pay rates and taxes, with such exceptions, if any, as may be intended; to repair, and deliver up the premises in repair at the end of the term; and to insure against fire if it is intended that the lessee shall do so. It is also usual, in addition to the general covenant to repair, to provide that the lessee shall make any specific repairs which may be required by the landlord by notice; and when the subject of the lease is a house, to paint inside and outside at certain stated periods. If the subject of the demise is a farm there should be covenants as to cultivation, and also special provisions as to the valuations, &c., at the end of the term.

If it is not intended that the lessee shall insure, the covenant for repair should expressly except accidents by fire or other casualty, and of course, if a portion of the repairs is to be done by the landlord, this should be expressly provided for.

Taxes.

With regard to taxes the lessee usually covenants to pay all taxes except the land tax, and sometimes to pay all taxes generally, which will include the land tax (*j*).

(*j*) *Amfield v. White*, 1 Ry. & Man, 1 De G. F. & J. 326.  
*Moo.* 246. See also *Parish v. Slec-*

Tithe rent-charge is not a tax or assessment, and therefore it should be specifically mentioned if intended to be paid by the tenant (*k*). Under the Property Tax Acts the lessee pays the property tax in the first instance and deducts it from his rent (*l*), and it is provided that no contract, covenant, or agreement, between landlord and tenant or any other persons touching the payment of taxes and assessments to be charged on their respective premises, shall be deemed to extend to the property or income tax, nor be binding contrary to the true intent and meaning of the Act (*m*).

The covenant by the lessee for insurance should specify in whose name the insurance is to be, and the amount of the insurance. It should also name the office or provide that the office shall be one approved by the lessor. The lessee should be bound to produce to the lessor the policy of insurance and the receipts for the premiums.

Covenant for insurance.

It has been held that a covenant to insure in the joint names of the lessor and lessee is substantially performed if the insurance is in the name of the lessor only (*n*), but a covenant to insure in the name of the lessor is broken by the lessee adding his own name (*o*). In a case where a lessee neglected to pay the premium until one month after it had become due, it was held that the covenant being once broken, the forfeiture thereby incurred was not necessarily cured by the subsequent payment of the premium and its acceptance by the insurance office (*p*).

Construction of covenant for insurance in certain cases.

A lease often contains a covenant by the lessee not to assign or underlet without the lessor's licence. It is generally considered that such a covenant does not prevent a bequest of the term, but the authorities are somewhat conflicting (*q*). And a deposit of a lease by way of security is not a forfeiture of a condition "not to

Covenant by lessee not to assign without licence.

(*k*) *Jeffrey v. Neale*, L. R. 6 C. P. 240. But see *Parish v. Sleeman*, 1 De G. F. & J. 326, where it was held an "outgoing," the agreement being to pay the rent "free of all outgoing."

(*l*) 5 & 6 Vict. c. 35, sect. 60, sch. A. No. 4, rule 9.

(*m*) Sect. 73.

(*n*) *Havens v. Middleton*, 10 Hare, 641.

(*o*) *Penniall v. Harborne*, 11 Q. B. 368.

(*p*) *Wilson v. Wilson*, 14 C. B. 616. This is now remedied by 22 & 23 Vict. c. 35, *vide infra*.

(*q*) *Fox v. Swann*, Sty. 482. Doe d. Beavan, 3 Man. & Sel. 353. But see *Barry v. Stanton*, Cro. Eliz. 330; *Roe d. Greyson v. Harrison*, 2 T. R. 425. Doe d. Evans v. Evans, 9 Ad. & E. 719.



Covenant  
not to assign  
not broken  
by giving  
warrant of  
attorney.

underlet, alien, sell, assign, transfer, and set over or otherwise part with" the lease or premises without the licence of the lessor (*r*). A covenant not to grant, let, assign, charge, or dispose of the premises is not broken by the lessee giving a warrant of attorney to enter up judgment against him by way of security for *bond fide* debts (*s*).

Nor by an  
underlease.

An underlease is not a breach of a covenant not to assign (*t*), but a covenant "not to let, set, or demise for all or any part of the term" has been held to prohibit an assignment (*u*). And it is apprehended that the decision in the case last referred to would have been the same without the words "for all or any part of the term," as it is difficult to suppose that a lessor could intend to restrain an underlease, but allow an absolute assignment. An assignment by one of two joint tenants to the other is a breach of such a covenant (*x*).

Effect of  
covenant  
in case of  
bankruptcy.

Although a lease contains a covenant that the lessee shall not assign, the lease will vest in the trustee of the lessee in case of his bankruptcy, and the trustee, notwithstanding such covenant, can assign the lease to a purchaser (*y*).

In absence  
of stipula-  
tion, lessor  
not entitled  
to such a  
covenant.

It is settled that under an agreement for a lease the lessor is not without express stipulation entitled to a covenant restraining alienation without licence, as a proper and usual covenant (*z*). But in a case where a suit was instituted for the specific performance of an agreement to take an assignment of a lease, the defendant resisted on several grounds, one being that the lease contained a covenant by the lessee not to assign without licence which, as he contended, was an unusual covenant, and V.-C. Kindersley held that although the covenant was not an usual one, *i. e.*, one which upon an agreement to grant a lease would be inserted as a matter of course, yet such a covenant was so common

(*r*) *Doe d. Pitt v. Hogg*, 4 D. & Ry. 226; see also *Doe v. Beavan*, 3 Mau. & Sel. 353.

(*s*) *Croft v. Lumley*, 5 El. & Bl. 682.

(*t*) *Crusoe d. Blencowe v. Bugby*, 2 Win. Bl. 766.

(*u*) *Greenaway v. Adams*, 12 Ves. 395.

(*x*) *Varley v. Coppard*, L. R. 7 C. P. 505.

(*y*) *Goring v. Warner*, 7 Vin. Abr. 85, pl. 9; *Philpot v. Hoare*, 2 Atk. 219.

(*z*) *Church v. Brown*, 15 Ves. 258; *Buckland v. Papillon*, L. R. 1 Eq. 477; *Hodgkinson v. Crowe*, L. R. 19 Eq. 591.

and ordinary, at least in or near London, that in his opinion the existence of such a covenant was no answer to a suit for specific performance (a).

It is often desirable to provide that the lessee shall not carry on particular trades on the premises, or do any act which may be a nuisance to the neighbourhood. A covenant not to permit any public trade or business to be carried on in the premises, but that the same shall be used as a private dwelling-house only, is broken by permitting the house to be used as a lady's school (b).

Covenant  
not to carry  
on trades.

A covenant not to use premises as a public-house, or a beer-house, is not broken by the sale of beer, in retail, not be drunk on the premises (c); and it has been decided that for a grocer to sell wine or spirits in bottles is a breach of a covenant "not to use premises for the sale of spirituous liquors" (d), but is permitted under a covenant "not to carry on the trade of a seller of wine and spirituous liquors" (e).

A covenant by the lessor for quiet enjoyment by the lessee without any let, &c., from the lessor or any persons lawfully claiming under him, should never be omitted, as in the absence of such a covenant the lessor would be subject to an absolute implied covenant for quiet enjoyment by the lessee.

Covenant  
for quiet  
enjoyment.

The lessee's covenants are usually followed by a proviso or condition enabling the lessor to re-enter in case the rent remains unpaid for a certain time, or in case of a breach of any of the covenants.

Proviso for  
re-entry :

The proviso for re-entry often extends to the case of the lessee becoming bankrupt or making an assignment for the benefit of his creditors, and in a case where an agreement was entered into for the lease of an hotel, such lease to contain usual covenants, it was held that under the circumstances, and having regard to the nature of the property, the power of re-entry ought to be made to take effect on those events (f). But under ordinary circumstances a proviso for re-entry on the bankruptcy,

often  
extends to  
bankruptcy.

(a) *Strangways v. Bishop*, 29 L. T. R. 220.

(b) *Wickenden v. Webster*, 25 L. J. Q. B. 264.

(c) *Pearse v. Coats*, L. R. 2 Eq. 688. *London and North Western Railway Company v. Garnett, ib.*, 9

Eq. 26.

(d) *Fielden v. Slater*, L. R. 7 Eq. 523.

(e) *Jones v. Bone*, L. R. 9 Eq. 674.

(f) *Haines v. Burnett*, 27 Beav. 500.

&c., of the lessee could not be insisted on in the absence of special stipulations.

Cannot be insisted on, unless stipulated for.

It has been held in a recent case that in the absence of stipulation a lessor is not entitled to insist on a proviso for re-entry on breach of any of the covenants (*g*).

Demand of rent necessary at common law.

Before a landlord could re-enter for non-payment of rent, he was, by the common law, obliged to make an actual demand, and in making such demand a number of troublesome formalities were necessary (*h*). By the Common Law Procedure Act, 1852, sect. 210 (*i*), the service of a writ in ejectment is substituted for an actual demand and re-entry; but a lessor cannot recover under this statute without showing that a half-year's rent was due before the writ was served, and that no sufficient distress could be found on the premises (*k*). It is usual to provide in the condition for re-entry, that the lessor may re-enter for non-payment of rent, whether the same shall have been legally demanded or not. Words to that effect will dispense with the necessity of making a legal demand, or of proving that no sufficient distress can be found (*l*). If the lease or agreement expressly requires that the rent shall be demanded before a re-entry, the demand need not be accompanied by the Common Law formalities (*m*), but it must not be made until the expiration of the time allowed for payment (*n*).

Forfeiture waived by acceptance of rent with notice.

A forfeiture, whether for non-payment of rent or for a breach of covenant, will be waived by a subsequent acceptance of rent, provided that the lessor at the time of such acceptance have notice of the forfeiture; and a distress or action for rent which has accrued subsequently to the breach constituting the forfeiture is a waiver (*o*). The acceptance of rent is, however, no waiver of forfeiture in respect of subsequent acts or omissions in breach of the same covenant (*p*).

(*g*) *Hodgkinson v. Crowe*, L. R. 10 Ch. 622. See the strong observations of James, L. J., with respect to the oppressive nature of the condition.

(*h*) See 1 Saund. 287, *n*. 16.

(*i*) This sect. seems to be substituted for sect. 2 of 4 Geo. 2, c. 28.

(*k*) See *Doe d. Foster v. Wandlass*, 7 T. R. 117.

(*l*) *Doe d. Harris v. Masters*, 2 B. & C. 490.

(*m*) *Doe d. Schofield v. Alexander*, 2 M. & S. 525.

(*n*) *Philips v. Bridge*, L. R. 9 C. P. 48.

(*o*) *Dendy v. Nichol*, 27 L. J. C. P. 220. See also *Cotesworth v. Spokes*, 30 L. J. C. P. 220.

(*p*) 4 Jarm. Conv. by Sweet, 366.

It has been long settled that equity will relieve against a forfeiture for non-payment of rent (*q*). By the Common Law Procedure Act, 1852 (*r*), a tenant may stay all further proceedings against him by paying the arrears of rent and costs to the landlord or into Court, and by the same act it is provided that a lessee against whom judgment and execution have been had in action of ejectment for non-payment of rent must proceed for relief in equity within six months after execution; and in case he proceeds in equity within that time, he must, in order to have or continue an injunction against the proceedings at law, bring into Court the arrears of rent and the amount of the taxed costs at law within forty days after the lessor's answer (*s*). And under the Supreme Court of Judicature Act, 1873, this relief will be granted by the same Court in which the proceedings are instituted.

Equity will relieve against forfeiture for non-payment of rent;

Equity will not in general relieve against the legal consequences of a breach of the covenants in a lease other than the covenant for payment of rent. Thus, equity will not interfere for the benefit of a lessee in the event of a breach of covenant to repair (*t*), whether the breach arises from accidental neglect or is wilful and obstinate (*u*), or a covenant not to assign without licence (*v*), or a covenant to cultivate in a peculiar manner (*x*), or to lay out a sum of money on the premises within a certain time (*y*); but in a case where a lessor brought ejectment for breach of a covenant to repair within three months after notice, and it appeared that of twenty-two items twenty had been proceeded with and fourteen completed, and that the delay had arisen from the state of the weather, the court granted relief (*z*).

but not in general against forfeiture for breach of covenants.

Before the passing of the 22 & 23 Vict. c. 35, equity would give no relief against a forfeiture occasioned by

- (*q*) *Wadman v. Calcraft*, 10 Ves. 687.  
 67. (*r*) Sects. 210, 211.  
 (*s*) There is a similar provision in 4 Geo. 2, c. 28, s. 2. See *Bowser v. Colby*, 1 Hare. 109.  
 (*t*) *Hill v. Barclay*, 16 Ves. 402; S. C. 18 Ves. 56.  
 (*u*) *Gregory v. Wilson*, 9 Hare, 473.  
 (*v*) *Hill v. Barclay*, 18 Ves. 63.  
 (*x*) *Lovat v. Lord Ranelagh*, 3 Ves. and B. 24. See *Rankin v. Lay*, 2 De G. F. & J. 65.  
 (*y*) *Bracebridge v. Buckley*, 2 Pr. 200.  
 (*z*) *Bargent v. Thompson*, 4 Giff.

the breach of a covenant to insure against fire (a). The last mentioned Act, however, enables the Court to give relief in such a case where no loss has happened, and the breach has happened through accident or mistake, or otherwise, without fraud or negligence; but relief is not to be given to the same person more than once (b).

Act applies  
to leases  
made before  
its passing.

It has been held that the Court may relieve against a breach of covenant to insure committed after the date of the Act arising on a lease dated *before* the Act (c).

(a) *Reynolds v. Pitt*, 19 Ves. 134; *White v. Warner*, 2 Mer. 459; *Green v. Bridges*, 4 Sim. 96.

(b) Sects. 4 to 9 are as follows:—

4. A court of equity shall have power to relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire where no loss or damage by fire has happened, and the breach has, in the opinion of the court, been committed through accident or mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the court in conformity with the covenant to insure, upon such terms as to the court may seem fit.

5. The court, where relief shall be granted, shall direct a record of such relief having been granted to be made by indorsement on the lease or otherwise.

6. The court shall not have power under this Act to relieve the same person more than once in respect of the same covenant or condition, nor shall it have power to grant any relief under this Act where a forfeiture under the covenant in respect of which relief is sought shall have been already waived out of court in favour of the person seeking the relief.

7. The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relating to the building covenanted to be insured effected by the lessee or mortgagor in respect of his in-

terest under the lease, or in the property, or by any person claiming under him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant.

8. Where on the *bonâ fide* purchase, after the passing of this Act, of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser, or any person claiming under him, shall not be subject to any liability by way of forfeiture or damages, or otherwise in respect of any breach of the covenant committed at any time before the completion of the purchase, of which the purchaser had not notice before the completion of the purchase; but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.

9. The preceding provisions shall be applicable to leases for a term of years, absolute [or determinable, on a life or lives, or otherwise; and also to a lease for the life of the lessee, or the life or lives of any other person or persons.

(c) *Page v. Bennett*, 2 Giff. 117.

Where an intended lessee has taken possession under an agreement for a lease, and has committed acts which would have amounted to a forfeiture if the lease had been actually made, he will not be entitled to insist on specific performance of the agreement (*d*). And in a case where a lessor entered into a covenant in the nature of a covenant for perpetual renewal, *provided the rent should have been paid and the covenants kept*, and the lessee committed a breach of the covenants to repair and insure, it was held that a court of equity could not compel the landlord to renew, nor restrain him from ejecting the lessee (*e*).

Specific performance of agreement for lease cannot be enforced by a person who has committed breaches.

It is an old principle of law that a condition cannot be apportioned, and that if a condition is once dispensed with, it is gone for ever. As a consequence of this principle, it was held in *Dumpor's Case* (*f*), that a condition not to alien without licence is determined by the first licence given. The decision in *Dumpor's Case* was followed by subsequent decisions, and it therefore became necessary whenever a lessor gave to the lessee a licence to assign, that the lessee should revive the condition by executing a new deed, called a deed of defeasance. In order to alter the law established by *Dumpor's Case*, 22 & 23 Vict. c. 35, s. 1, provides in effect that a licence to do any particular act which, without such licence, would create a forfeiture, shall extend only to that act, and that the condition of re-entry shall remain in force except in respect of that particular act (*g*). And the above section is followed by

Conditions cannot be apportioned at common law,

*Dumpor's case.*

Law established by *Dumpor's case* altered by 22 & 23 Vict. c. 35.

(*d*) *Gregory v. Wilson*, 9 Hare, 683; *Lewis v. Bond*, 18 Beav. 85; *Rankin v. Lay*, 2 De G. F. & J. 65.

(*e*) *Job v. Bannister*, 2 K. & J. 374.

(*f*) 4 Co. Rep. 119 b.

(*g*) The 1st sect. is as follows:—Where any licence to do any act which without such licence would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted or to be hereafter granted, shall at any time after the passing of this Act be given to any lessee or his assigns, every such licence shall, unless otherwise expressed, extend only to the permission actually given, or to any

specific breach of any proviso or covenant made or to be made, or to the actual assignment, underlease, or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such licence); and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, underlease, or other matter not specifically authorized or made punishable by such licence, in the same manner as if no such licence had been given; and

another, which provides in effect that a licence to one of several co-lessees shall not destroy the condition as against the other co-lessees, and that a licence to assign &c., part of the property shall not destroy the condition as to the rest of the property (*h*).

Grantees of reversions enabled by 32 Hen. 8, c. 34, to sue and be sued on covenants, &c.

The grantee of the reversion expectant on a lease could not at the common law have sued on the covenants in the lease; but by the statute 32 Hen. 8, c. 34, it is provided that "all grantees of reversions shall enjoy all advantages, benefits, and remedies by action for non-performance of conditions, covenants, or agreements contained or expressed in leases which the grantors or lessors themselves had or enjoyed," and by the same statute a right of action is given to the lessee against grantees of the reversion.

Wherelessor has only equitable interest, and the fact appears on the lease, covenants are in gross;

If a lease is made by a person having only an estate in equity, as by a mortgagor, and the fact of the lessor having only an equitable interest appears on the face of the lease, the covenants are covenants in gross, and before the passing of the Judicature Act, 1873, the assignee of the lessor could not sue on them at law, but it is apprehended that this difficulty is removed by the Act, under which every branch of the Court has equitable jurisdiction (*i*). If, however, the lease does not disclose on the face of it that the lessor has only an equitable estate, the covenants of the lessee will run with the land so that the grantee of the equitable

but if fact does not appear, covenants

the condition or right of re-entry shall be and remain in all respects as if such licence had not been given, except in respect of the particular matter authorized to be done.

(*h*) Sect. 2 is as follows:—Where in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning, or underletting, or doing any other specified act without licence, and a licence at any time after the passing of this Act shall be given to one of the several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without licence, or shall be given to any lessee or owner, or any one of the several

lessees or owners, to assign or underlet part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such licence shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such licence.

(*i*) *Pargeter v. Harris*, 7 Q. B. 708,

reversion may sue on them. The lease in such case operates by estoppel. The law will not permit the lessee to set up any defence grounded on the fact that the lessor *nil habuit in tenementis*, and upon the execution of such a lease the lessor creates, in contemplation of law, a reversion in fee simple transmissible by descent to his heir, and by purchase or devise to an assignee or devisee (*j*).

run with the reversion by estoppel.

By the Judicature Act 1873 (*k*), it is provided that a mortgagor entitled, for the time being, to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession or for the recovery of such rents or profits or to prevent or recover damages in respect of any trespass or other wrong relative thereto in his own name only unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Mortgagor in possession may sue for rent.

It seems doubtful whether under the Stat. 8 & 9 Vict. c. 106, sec. 5, a lessor can pass to his assignee the right to enter for a breach already committed of the lessee's covenants; at all events, such a right will not pass by the assignment of the reversion, unless expressly mentioned (*l*).

Whether lessor can assign right of entry already accrued.

As the right to the rent and to sue on the covenants follows the reversion, it was formerly important, where a lease was made by a person who was himself only a termor, or had otherwise a limited interest, that the term or other interest constituting his reversion should not be merged or surrendered. For example, if lands were held by A. for life, or for years, with remainder to B., and A. made a lease and afterwards surrendered his estate to B. or took a conveyance from B. which had the effect of merging his (A.'s) estate, the consequence was that the immediate reversion on the lease being gone, the rent and the benefit of the covenants were gone also. To remedy this, it is now provided by 8 & 9 Vict. c. 106, s. 9, that in case of the merger or surrender of the

Effect of destruction of mesne reversion.

8 & 9 Vict. c. 106, s. 9.

(*j*) *Cuthbertson v. Irving*, 4 H. & N. 742; *Hickman v. Machin*, *ib.* 716.

(*l*) *Crane v. Batten*, 23 L. T. R. 220; *Hunt v. Remnant*, 9 Exch. 635, 23 L. J. Ex. 135.

(*k*) Sect. 25, sub-sect. 5.



reversion expectant on a lease, the estate conferring, as against the tenant under the same lease, the next vested right to the same hereditament, shall for the purpose of preserving the incidents to such extinguished reversion, be deemed the reversion expectant on the lease.

Assignee of part of reversion may sue for apportioned part of rent, &c.

By section 3 of the 22 & 23 Vict. c. 35, it is provided that where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Practice as to preparation and expense of lease.

It may be here observed that in the absence of stipulation to the contrary, it is the practice for the lessor's solicitor to prepare the lease, and for the lessee to pay his own expenses and also the expenses of the lessor.

### V. *Apportionment of Rent and other Periodical Payments.*

No apportionment of rent by the common law.

According to the common law, rents reserved on a lease and other rents were not apportionable; consequently if a tenant for life made a lease otherwise than under a power, and died during a current half year of the tenancy, the whole of the rent for that half-year was lost, because the lease determined on his death, and the rent could not be apportioned (*m*). Again, if a lessor settled the reversion on A. for life with remainder to B., and A. died during a current half-year, the whole rent for that half-year was payable to B.

11 Geo. 2, c. 19; 4 & 5 Will. 4, c. 22;

The Acts 11 Geo. 2, c. 19, and 4 & 5 Will. 4, c. 22, were passed to remedy some of the inconveniences arising from this state of the law, but as the operation of these Acts was only partial, a more complete remedy has been lately provided by the Act 33 & 34 Vict. c. 35, by which it is enacted as follows:—

33 & 34 Vict. c. 35.

Sect. 2. From and after the passing of this Act all rents,

(*m*) See 1 Swanston, 337, note, and the cases there cited.

annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportioned in respect of time accordingly.

Rents to accrue from day to day and be apportionable.

Sect. 3. The apportioned part of any such rent, annuity, dividend, or other payment, shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment, when the entire portion of which such apportioned part shall form part shall become due and payable, and not before, and in the case of a rent, annuity, or other such payment determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before.

Apportioned part of rent to be payable when next entire portion becomes due.

Sect. 4. All persons and their respective heirs, executors, administrators and assigns, and also the executors, administrators and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies at law and in equity for recovering such apportioned parts as aforesaid, when payable (allowing proportionate parts of all such allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively; provided that persons liable to pay rents reserved out of or charged on lands or other hereditaments of any tenure, and the same lands or other hereditaments shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person who, if the rent had not been apportionable under this Act or otherwise, would have been entitled to such entire or continuing rent, and such apportioned part shall be recoverable from such heir or other person by the executors or other parties entitled under this Act to the same by action at law or suit in equity.

Persons to have same remedies for apportioned parts as for entire portions.

Proviso as to rents reserved in certain cases.

It has been decided that the above Act applies to a specific as well as a residuary devise, and that the current half-year's rent of devised real estate (*n*) and the

Cases on the construction of the Act.

(*n*) *Capron v. Capron*, L. R. 17 Eq. 288. *Hasluck v. Pedley*, *ib.* 19 Eq. 271.

current half-year's dividend of guaranteed railway stock specifically bequeathed (*o*), are apportionable between the general personal estate and the devisee or specific legatee. But in a case where the dividends and income of a *private* trading partnership, regulated by a deed of partnership, were specifically bequeathed to A. for life with remainder once, it was held that the whole of a dividend which was declared under the deed of partnership shortly after the testator's death passed to A, on the ground that the dividend was not a "dividend or other periodical payment" within the meaning of sect. 2, the definition of the term "dividend" in sect. 5, referring only to *public* companies (*p*).

It has been decided that the Act applies to all instruments, whether coming into operation before or after its passing (*q*).

## VI. *Leases under Powers.*

Powers of leasing usually conferred by settlements.

Every well-drawn settlement gives to the tenant for life in possession, or if there is no tenant for life in possession who is *sui juris*, to the trustees of the settlement, or to the guardians of the infant tenant for life or in tail, a power to grant leases for twenty-one years, and, if the nature of the property requires it, building and mining leases.

Defective execution of power of leasing, when remedied.

Where the power prescribes conditions to be observed in regard to its exercise, care should be taken to comply with such conditions. But a failure to do so, where the failure is one of form and not of substance, will generally be relieved against by the Court in the exercise of its equitable jurisdiction. And independently of the ordinary jurisdiction of the Court in aiding defective execution of a power, the legislature has made special provision for remedying defects in the case of leases. Thus by the stat. 12 & 13 Vict. c. 26, it is provided that where in the intended exercise of any power of leasing, which by reason of the non-observance

Stat. 12 & 13 Vict. 26.

(*o*) *Pollock v. Pollock*, L. R. 18 Eq. 329, which seems to over-rule *Whitehead v. Whitehead*, L. R. 16 Eq. 528.

(*p*) *Jones v. Ogle*, L. R. 8 Ch. 192.

(*q*) *Re Clines's estate*, L. R. 18 Eq. 213, *Hasluck v. Pedley*, *ib.* 19 Eq. 271. But see the observations of Selborne, L. C. in *Jones v. Ogle*, *ib.* 8 Ch. 195.

or omission of some condition or restriction or by reason of any other deviation from the terms of such power, is invalid against the remainderman, such lease, if made *bonâ fide*, and the lessee has entered thereunder, shall be considered in equity as a contract for a valid lease under such power, save so far as any variation may be necessary in order to comply with the terms of the power (r). And that where a lease under a power is invalid by reason that at the time of granting thereof the lessor could not lawfully grant the same, but the estate of such lessor in the property shall have continued after the time when such lease might have been granted by him, then the lease is to be valid (s). And by the Act 13 & 14 Vict. c. 17, it is provided that a receipt, or other memorandum in writing or payment of rent confirming an invalid lease, shall, as against the person giving such receipt, &c., be deemed a confirmation (t).

Stat. 13 & 14  
Vict. c. 17.

If the settlement contains no power of leasing, it was formerly necessary to obtain a private Act of Parliament to remedy the defect. But in 1856, an Act was passed to authorize sales and leases of settled estates, and was followed by amending Acts in subsequent sessions. All these Acts have been repealed, and their provisions consolidated by the Settled Estates Act, 1877 (u).

Acts to  
authorize  
leases of  
settled  
estates now  
consoli-  
dated.

This Act enables any person entitled to the possession or receipt of the rents and profits of any settled estates (as defined by the Act), for an estate for *any* life, or for a term of years determinable with any life or lives, or for any greater estate, either in his own right, or in right of his wife, (in the absence of any express declaration to the contrary in the settlement) and also any person entitled to the possession or receipt of any unsettled estates as tenant by the curtesy, or in dower, or in right of a wife seised in fee, without any application to the Court, to demise the same except the principal mansion, and the lands usually occupied therewith, for twenty-one years as regards estates in England, or for thirty-five years as regards estates in Ireland, provided that the demise be by deed, and at the best rent

Act of 1877  
enables  
tenants for  
life, &c., to  
grant leases  
without any  
application  
to the  
Court.

(r) Sect. 2.  
(s) Sect. 4.

(t) Sect. 2.  
(u) 40 & 41 Vict. c. 18.

without any premium, and he not without impeachment of waste, and contain a covenant to pay the rent and such other usual and proper covenants as the lessor shall think fit, and a condition of re-entry on non-payment of rent for twenty-eight days; and provided a counterpart be executed by the lessee (*x*), and the execution of the lease by the lessor is made sufficient evidence of the execution of the counterpart by the lessee (*y*).

Construc-  
tion of simi-  
lar clause in  
former Act.

The Act of 1856 (*z*), contained a clause similar to the above section in the present Act, except that the person to exercise the power was "any person entitled to the possession, &c., for an estate *for life*," instead of "for an estate for *any life*." Upon the construction of that clause, it was held that under a trust directing the trustees to receive the rents and apply them in paying certain charges, and to pay the surplus to A. for his life, A. could not exercise the power of leasing, as in such a case the trustees, and not A., are to have the management (*a*).

High Court  
of justice  
may autho-  
rize leases.

The Settled Estates Act, 1877, also empowers the High Court of Justice to authorize leases of settled estates. In order to ascertain the terms and conditions on which the Court will authorize leases, and the proceedings to be taken for that purpose, it will be sufficient in a work on conveyancing, to refer the reader to the Act itself, and to treatises on the practice of the Court.

Leases by  
ecclesiasti-  
cal persons  
and bodies.

The powers of ecclesiastical persons and bodies to grant leases are regulated by the Acts of Parliament mentioned below (*b*): The general effect of these enactments is to prohibit leases for more than twenty-one years or three lives, except as regards houses in towns, which may be demised for forty years; and incumbents must obtain the confirmation of the patron and ordinary in order to bind their successors. Other restrictions are imposed by the Acts (*c*). The remedial clauses in

(*x*) Sect. 46.

(*y*) Sect. 48.

(*z*) 19 & 20 Vic. 119, sect. 32.

(*a*) *Taylor v. Taylor*, L. R. 20 Eq. 297.

(*b*) 32 Hen. VIII., c. 28; 1 Eliz.,

c. 19; 13 Eliz., c. 10; 14 Eliz., c. 11; 18 Eliz., c. 11; 39 & 40 Geo. III., c. 41; 5 & 6 Vict. c. 27.

(*c*) See Bacon Ab. Tit. Leases E., *Jenkins v. Green*, 28 Beav. 87.

the Act 12 & 13 Vict. c. 26 above referred to do not apply to ecclesiastical leases (*d*).

VII.—*Stamps on Leases and Agreements for Leases.*

The present Stamp Act (*e*) imposes the following duties on leases :—

- |  |  |    |    |
|--|--|----|----|
| (1) For any definite term less than a year :   | £  | s. | d. |
| (a) Of any dwelling-house or tenement,<br>or part of a dwelling-house or tene-<br>ment, at a rent not exceeding the<br>rate of £10 per annum . . . . . | 0  | 0  | 1  |
| (b) Of any furnished dwelling-house or<br>apartments where the rent for such<br>term exceeds £25 . . . . .   | 0  | 2  | 6  |
| (c) Of any lands, tenements, or herit-<br>able subjects, except or otherwise<br>than as aforesaid . . . . .  | <div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;"> <p>The same duty as a<br/>lease for a year at the<br/>rent reserved for the<br/>definite term.</p> </div> </div> |    |    |
- (2) For any other definite term, or for any indefinite term :
- Of any lands, tenements, or heritable subjects :—
- Where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock, or security :
- In respect of such consideration
- Where the consideration, or any part of the consideration, is any rent :
- In respect of such consideration :
- If the rent, whether reserved as a yearly rent or otherwise, is at a rate, or average rate :

(*d*) Sect. 7.

(*e*) 33 & 34 Vict. c. 97, sched. "Lease or Tack."

	If the term is definite and does not exceed 35 years, or is indefinite.			If the term being definite exceeds 35 years, but does not exceed 100 years.			If the term being definite exceeds 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.
Not exceeding £5 per annum	0	0	6	0	3	0	0	6	0
Exceeding									
£5 and not exceeding £10	0	1	0	0	6	0	0	12	0
£10       "       "       £15	0	1	6	0	9	0	0	18	0
£15       "       "       £20	0	2	0	0	12	0	1	4	0
£20       "       "       £25	0	2	6	0	15	0	1	10	0
£25       "       "       £50	0	5	0	1	10	0	3	0	0
£50       "       "       £75	0	7	6	2	5	0	4	10	0
£75       "       "       £100	0	10	0	3	0	0	6	0	0
£100									
For every full sum of £50, and also for any fractional part of £50 thereof . . .	0	5	0	1	10	0	3	0	0

(3) Of any other kind whatsoever, not herein-  
before described . . . . . 0 10 0

The Act also contains the following clauses relating to stamps on leases :—

Sect. 96. (1) An agreement for a lease or tack, or with respect to the letting of any lands, tenements, or heritable subjects for any term not exceeding thirty-five years, is to be charged with the same duty as if it were an actual lease or tack made for the term and consideration mentioned in the agreement.

(2) A lease or tack made subsequently to and in conformity with such an agreement, duly stamped, is to be charged with the duty of sixpence only.

Sect. 97. (1) Where the consideration, or any part of the consideration, for which any lease or tack is granted or agreed to be granted, does not consist of money, but consists of any produce or other goods, the value of such produce or goods is to be deemed a consideration in respect of which the lease or tack or agreement is chargeable with *ad*

*valorem* duty, and where it is stipulated that the value of such produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying after, any permanent rate of conversion, the value of such produce or goods is, for the purpose of assessing the *ad valorem* duty, to be estimated at a given sum, or according to such permanent rate.

- (2) A lease, or tack, or agreement, made either entirely or partially, for any such consideration, if it contains a statement of the value of such consideration, and is stamped in accordance with such statement, is, so far as regards the subject matter of such statement, to be deemed duly stamped, unless or until it is otherwise shown that such statement is incorrect, and that it is in fact not duly stamped.

Statement as to value to be deemed true.

Sect. 98. (1) A lease, or tack, or agreement for a lease or tack, or with respect to any letting, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease, tack, or agreement, of or relating to the same subject matter.

No additional duty on account of penal rent.

- (2) No lease made for any consideration or considerations in respect whereof it is chargeable with *ad valorem* duty, and in further consideration either of a covenant by the lessee to make, or of his having previously made, any substantial improvement of or addition to the property demised to him, or of any covenant relating to the matter of the lease, is to be charged with any duty in respect of such further consideration.

No additional duty on account of covenant to build.

- (3) No lease for a life or lives not exceeding three, or for a term of years determinable with a life or lives not exceeding three, and no lease for a term absolute not exceeding twenty-one years, granted by an ecclesiastical corporation aggregate or sole, is to be charged with any higher duty than thirty-five shillings.

Duty on leases by ecclesiastical corporations.

Sect. 99. The duty upon an instrument chargeable with duty as a lease or tack for any definite term less than a year of—

Duty in certain cases may be denoted by adhesive stamp.



(1) Any dwelling-house or tenement, or part of a dwelling-house or tenement, at a rent not exceeding the rate of ten pounds per annum :

(2) Any furnished dwelling-house or apartments :

Or upon the duplicate or counterpart of any such instrument, may be denoted by an adhesive stamp, which is to be cancelled by the person by whom the instrument is first executed.

Penalty in  
certain  
cases

Sect. 100. (1) Every person who executes, or prepares, or is employed in preparing any instrument upon which the duty may, under the provisions of the last preceding section, be denoted by an adhesive stamp, and which is not, at or before the execution thereof, duly stamped, shall forfeit the sum of £5.

(2) Provided that nothing in this section contained shall render any person liable to the said penalty of £5 in respect of any letters or correspondence.

## No. I.

LEASE (a) of a DWELLING-HOUSE for TWENTY-ONE YEARS, *determinable by LESSEE on NOTICE at the end of SEVEN or FOURTEEN YEARS. USUAL COVENANTS by LESSEE including covenants not to ASSIGN or UNDERLET without consent of LESSOR, or use the HOUSE except as a DWELLING-HOUSE. PROVISIO enabling LESSEE to purchase FEE SIMPLE on notice.*

OF A  
DWELLING-  
HOUSE.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B., of, &c., (hereinafter called "the lessor"), of the one part, and C. D., of, &c. (hereinafter called "the lessee"), of the other part, WITNESSETH, that in consideration of the rent hereinafter reserved, and of the covenants hereinafter contained, and on the part of the lessee, his executors, administrators, and assigns, to be observed and performed, the lessor doth hereby demise unto the lessee, his executors, administrators, and assigns, ALL THAT messuage or dwelling-house, &c. (*parcels*), TOGETHER WITH ALL rights, easements, and appurtenances thereto belonging, To HOLD the same unto the lessee, his executors, administrators, and assigns, from the — day of — 18—, for the term of twenty-one years thence next ensuing, YIELDING AND PAYING during the said term the yearly rent of £—, by four equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in every year, without any deduction (except for the land tax and landlord's property tax, if any), the first quarterly payment to be made on the 25th day of March next (b): AND THE lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the lessor, his heirs and assigns, that the lessee, his executors, administrators, and assigns, will pay the said rent on the days and in manner hereinbefore mentioned, and will also pay and discharge all taxes, rates and assessments whatsoever now or hereafter during the said term to become payable for or in respect of the said premises

Witnessing  
part.

Demise of  
dwelling-  
houses

to lessee for  
twenty-one  
years.

Covenants  
by lessee to  
pay rent and  
taxes,

(a) Forms of agreements for leases will be found in Vol. I.

(b) Sometimes the last quarter's rent is made payable in advance—In such case, add here, "and the last quarterly payment to be made in advance on the 29th day of September immediately preceding the expiration of the term, together with the quarterly payment falling due on that day."

OF A  
DWELLING-  
HOUSE.

to keep in  
good repair  
and deliver  
up same in  
good repair  
at the end of  
term,

to paint out-  
side every  
three years,

and inside  
every seven  
years,

and to  
permit  
lessor to  
enter and  
view the  
premises,

and to repair  
after notice  
of defects.

To insure,

hereby demised, or any part thereof (except the land tax and the landlord's property tax, if any): AND ALSO will at all times during the said term, at his or their own cost, well and sufficiently repair, support, amend, and keep the said messuage and premises hereby demised with all manner of necessary reparations and amendments whatsoever, and the said messuage and premises so well and sufficiently repaired, supported, amended, and kept, will at the expiration or sooner determination of the said term peaceably and quietly surrender and give up unto the lessor, his heirs and assigns: AND ALSO will, once at least in every three years of the said term, paint the outside wood and iron-work of or belonging to the said messuage and premises with two coats at least of good oil colour, and in a proper and workmanlike manner: AND ALSO will, once in every seven years of the said term, paint the inside wood and ironwork of or belonging to the said messuage and premises with two coats at least of good oil colour, and in a proper and workmanlike manner: AND ALSO will once in every like period of seven years whitewash and colour such parts of the said messuage and premises as are usually whitewashed and coloured: AND ALSO will permit the lessor, his heirs and assigns, with or without workmen and others, twice in every year during the said term, at convenient times in the daytime, into and upon the said demised premises, or any part thereof, to enter and view and examine the state and condition thereof, and of all such decays, defects, and wants of reparation as shall be found upon every such view and examination, to give to the lessee, his executors, administrators, or assigns, or leave for him or them at or on the said demised premises, or any part thereof, notice in writing to repair and amend the same within the space of six calendar months then next following, within which space of six calendar months, he the lessee, his executors, administrators, or assigns, will repair and amend the same decays, defects, and wants of reparation accordingly: AND ALSO THAT the lessee, his executors, administrators, or assigns, will, at his or their own cost, at all times during the said term, keep insured the said messuage and buildings from loss or damage by fire, in the joint names of the lessee, his executors, administrators, or assigns, and of the lessor, his heirs or assigns, in — Insurance Office, or in some other office or offices in London or Westminster, to be approved of by the lessor,

his heirs or assigns, in the sum of £—— at least, and will for that purpose pay all premiums and sums of money payable in respect of such insurance, and will from time to time, when required, produce to the lessor, his heirs or assigns, the policy of such insurance and the receipt for every such payment :

OF A  
DWELLING-  
HOUSE

AND THAT ALL moneys which shall be received from time to time under or by virtue of any such insurance as aforesaid shall be forthwith laid out and applied in the rebuilding and reinstating the said messuage and premises, and in case the said money shall be insufficient for that purpose, then he, the lessee, his executors, administrators, or assigns, will pay the deficiency out of his or their own money : AND ALSO THAT he, the lessee, his executors, administrators, or assigns, will not at any time during the said term carry on, or permit to be carried on, any trade or business in or upon the said messuage and premises or any part thereof, or permit the same to be occupied in any other manner than as a private dwelling-house : AND will not assign or underlet or part with the possession of the said messuage and premises or any part thereof, without the consent in writing of the lessor, his heirs or assigns, first had and obtained : PROVIDED ALWAYS, and it is hereby declared, that if the said yearly rent of £—— or any part thereof, shall be in arrear for the space of twenty-one days next after any of the days whereon the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if there shall be any breach of any of the covenants hereinbefore contained and on the part of the lessee, his executors, administrators, and assigns, to be observed and performed, then and in any of the said cases it shall be lawful for the lessor, his heirs or assigns, at any time thereafter, into and upon the said demised premises or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess, and enjoy as in his or their first or former estate : AND IT IS HEREBY DECLARED that if this lease shall be determined by a re-entry under the foregoing power, the lessee, his executors, administrators, or assigns, shall pay a proportionate part of the said rent from the last quarter-day up to the day of such re-entry : AND THE lessor, doth hereby, for himself, his heirs, executors, and administrators, covenant with the lessee, his executors, administrators, and assigns, that he, the lessee, his executors, administrators, and assigns, paying the said yearly

and to apply  
insurance  
moneys in  
rebuilding,

not to use  
premises ex-  
cept as a  
dwelling-  
house.

Not to  
assign or  
underlet  
without  
consent of  
lessor.

Power of re-  
entry in  
case rent  
should be in  
arrear, or  
covenants  
should be  
broken.

In case of  
re-entry a  
proportion-  
ate part of  
rent to be  
paid.

Covenant by  
lessor for  
quiet enjoy-  
ment.

OF A  
DWELLING-  
HOUSE.

Power to  
lessee to  
determine  
term upon  
notice at  
end of seven  
or fourteen  
years.

Power to  
lessee to  
purchase  
reversion.

Subject to  
conditions  
as to time  
for comple-  
tion.

Construc-  
tion of  
clauses,  
conforming  
on lessee  
right of pre-  
emption.

rent of £—— in manner aforesaid, and observing and performing all the covenants hereinbefore contained, and on his or their part to be observed and performed, shall and may peaceably and quietly hold and enjoy the said messuage and premises hereby demised during the said term, without any eviction or disturbance by the lessor, his heirs or assigns, or any person or persons lawfully or equitably claiming by, from, or under him, them, or any of them: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the lessee, his executors, administrators, or assigns, shall be desirous of determining this demise at the end of the first seven years or fourteen years of the said term, and of such his or their desire shall give to the lessor, his heirs or assigns, or leave at his or their usual or last known place or places of abode in England or Wales six calendar months' previous notice in writing, then and in such case, at the end of such seven or fourteen years, as the case may be, the said term hereby granted shall absolutely cease and determine, but subject to the rights and remedies of the lessor, his heirs or assigns, for or in respect of any rent in arrear or any breach of any of the lessee's covenants: PROVIDED ALWAYS, and it is hereby agreed and declared (c), that if the lessee his executors, administrators, or assigns, shall, at any time before the —— day of ——, 18——, give to the lessor, his heirs or assigns, or leave at his or their usual or last known place of abode in England or Wales, a notice in writing stating the intention of the person or persons giving such notice to purchase the reversion in fee simple of the premises hereby demised, at the price of £——, then and in such case the person or persons giving such notice shall purchase the said reversion at the price of £——, subject to the following conditions, namely, 1st, THE purchase-money shall be paid, and the purchase shall be com-

(c) According to the form here given the giving of the notice by the lessee to the lessor will constitute the relation of vendor and purchaser between them so as to entitle each party to specific performance of the contract for sale. Sometimes the clause is so worded as to make the payment of the money a condition precedent to the right of purchase. Thus in *Lord Ranelagh v. Melton*, 2 Dr. & Sm. 278, the lease provided that if the lessee should desire to purchase the fee simple and should give three months' notice of such desire, and at the expiration of such notice should pay the purchase-money, then the lessor would convey the property to the lessee, and it was held that the money must be paid on the precise day on which the notice expired, and that until the condition was thus performed the relation of vendor and purchaser did not arise on either side. See also *Weston v. Collins*, 34 L. J. Ch. 353.

pleted, on such one of the quarterly days hereby appointed for payment of rent as shall happen next after the expiration of three calendar months from the date of such notice, and if the said purchase shall not be completed on that day, the purchaser shall pay to the vendor interest on the said purchase-money after the rate of 5 per cent. per annum, computed from that day up to the actual completion of the purchase; 2ndly, THE purchaser shall pay all arrears of rent up to the day appointed for the completion of the purchase, including the quarter's rent due on that day; 3rdly, UPON payment of the purchase-money and all arrears of rent at the time aforesaid, the vendor shall execute a proper conveyance of the said premises to the purchaser, such conveyance to be prepared by and at the expense of the purchaser; 4thly, THE vendor shall, within one calendar month from the date of such notice as aforesaid, deliver to the purchaser or his solicitor an abstract of the vendor's title to the said premises, such title to commence with an indenture, dated, &c., and the purchaser shall make no objection or enquiry as to the earlier title; 5thly, WITHIN fourteen days after the delivery of the abstract the purchaser shall state in writing, and send to the vendor's solicitor, all objections and requisitions (if any) in respect of the title, and all objections and requisitions not sent within that time shall be deemed to be waived, and if any objection or requisition shall be made which the purchaser shall be unable or unwilling to remove or comply with, the vendor may, by a notice in writing, rescind the sale without payment of any compensation or costs whatsoever; 6thly, THE expense of all certificates, attested, official, or other copies or extracts of or from any documents, and all other evidence which the purchaser may require for the purpose of verifying the abstract or otherwise, shall be paid by the purchaser (d).

IN WITNESS, &c.

(d) If the option to purchase is exercised by the lessee after the lessor's death, the purchase-money will go to his (the lessor's) personal representative as part of his personal estate, and not to the heir or devisee of the real estate, *Lawes v. Bennett*, 1 Cox, 167; *Townley v. Bedwell*, 14 Ves. 591; *Weeding v. Weeding*, 1 J. & H. 424. This is inconvenient, and generally contrary to the lessor's intention, and it is therefore important that he should make proper provision by his will not only for enabling the sale to be carried out if the option is exercised, but also for making the purchase-money go to the persons who would otherwise have remained entitled to the reversion.

OF A  
DWELLING-  
HOUSE.

Arrears of  
rent to be  
paid up to  
completion.

Conveyance.

Title when  
to com-  
mence.

Requisi-  
tions to be  
sent within  
specified  
time.

Expenses to  
be borne by  
purchaser.

Purchase  
money to be  
paid by  
lessee elect-  
ing to pur-  
chase, goes  
to personal  
representa-  
tive of  
lessor.

## No. II.

OF A  
HOUSE AND  
GARDEN.

UNDER-LEASE *of a DWELLING-HOUSE and GARDEN*  
*for a TERM of SEVEN YEARS, determinable by EITHER*  
*PARTY at the END of the THIRD or FIFTH YEAR; the*  
*INTERNAL REPAIRS to be done by the LESSEE, and*  
*the EXTERNAL REPAIRS by the LESSOR; PROVISION*  
*for SUSPENDING rent in case of DAMAGE by des-*  
*truction by FIRE.*

Partics.	THIS INDENTURE, made the — day of — BETWEEN A. B., of, &c. (hereinafter called “ the lessor”), of the one part, and C. D., of, &c. (hereinafter called “ the lessee ”) of the other part, WITNESSETH, that in consideration of the rent hereinafter reserved, and the covenants hereinafter contained, and on the part of the lessee to be observed and performed, he the
Demise by lessee of house, &c.,	lessor doth by these presents, grant and demise unto the lessee ALL THAT, &c. ( <i>describe premises</i> ), TOGETHER WITH THE landlord’s fixtures now in and about the same premises, with the rights, members, and appurtenances, Excepting and always reserving out of this demise unto the lessor, his executors, administrators, or assigns, and the ground landlord for the time being, the right of ingress, egress, and regress, into, upon, and out of the said messuage and premises, at all reasonable times during the continuance of this demise, to inspect and see the condition of the
to lessee for term of seven years, determinable.	same premises, TO HAVE AND TO HOLD the said messuage and premises hereby demised unto the lessee, his executors, administrators, and assigns, for the term of seven years, from the — day of — 18 —, determinable nevertheless as hereinafter mentioned, YIELDING AND PAYING therefor yearly, and every
Rent.	year during the said term, unto the lessor, his executors, administrators, or assigns, the rent of £— by equal quarterly payments, on the — day of —, the — day of —, the — day of —, and the — day of —, the first quarterly payment thereof to be made on the — day of — next.
Covenants by lessee	AND the lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the lessor, his executors, administrators, and assigns, that he the lessee, his executors, administrators, or assigns, will from time to time during
to pay rent	the said term, pay unto the lessor, his executors, administrators,

or assigns, the said yearly rent of £——, on the days, and in the manner hereinbefore mentioned, and will also pay and discharge all the taxes, rates, and assessments whatsoever, now or hereafter to become payable for or in respect of the premises hereby demised (except the land tax and landlord's property tax, and the ground-rent, AND will at all times during the said term, at his own cost, well and substantially repair, uphold, support, amend, and keep the inside of the said messuage and premises, with the paint, paper, locks, drains, glass and fixtures, with all manner of necessary reparations and amendments whatsoever, AND also will keep the garden and walks in good order, and the trees and ornamental shrubs properly pruned, and will renew any trees or shrubs which may perish or decay, and will not cut down or remove any trees or shrubs without written consent from the lessor, his executors, administrators, or assigns, and the said messuage and premises, and the fixtures belonging thereto, and garden trees and shrubs so well and sufficiently repaired, supported, amended, and kept, shall and will at the expiration or sooner determination of the said term, peaceably and quietly surrender, and yield up unto the lessor, his executors, administrators, or assigns, AND will not without the consent in writing of the lessor, his executors, administrators, or assigns, assign or underlet the said premises or any part thereof at any time during the said term, or carry on or permit to be carried on any trade or business in or upon the said messuage and premises, or any part thereof, or permit the said messuage to be occupied in any other manner than as a private dwelling-house, or as a furnished lodging-house, AND will not do or permit to be done in or upon the said messuage or premises any spoil or waste or any other act or thing whatsoever to the hurt or annoyance of the lessor, his executors, administrators, or assigns, or whereby a breach of any covenant or condition might be committed under the ground lease, AND will not during the continuance of this demise, sell by auction in or upon the said premises, any goods, chattels, or effects whatsoever: PROVIDED ALWAYS, &c. (*power of re-entry on non-payment of rent or breach of covenants,* *supra*, p. 37): AND THE lessor doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the lessee, his executors, administrators, and assigns, that he the lessee, his executors, administrators, and assigns, paying the said yearly

OF A  
HOUSE AND  
GARDEY.  
and taxes;

to keep  
inside in  
repair

and garden  
in good  
order,

and deliver  
up same in  
good repair  
and order at  
end of term;

not to assign  
without  
licence,

Covenant by  
lessor for  
quiet enjoy-  
ment by  
lessee,



OF A  
HOUSE AND  
GARDEN.

and to keep  
outside of  
house in  
good repair.

Proviso that  
rent shall be  
suspended  
in case of  
destruction  
by fire.

Power to  
either party  
to deter-  
mine lease  
at end of  
3rd or 5th  
year.

rent in manner aforesaid, and observing and performing all the covenants hereinbefore contained, and on his or their part to be observed and performed, shall and may peaceably and quietly hold and enjoy the premises hereby demised during the said term, determinable as hereinafter mentioned, without any eviction or disturbance by the lessor, or any person or persons lawfully claiming or to claim by, from, or under him, AND that he the lessor, his executors, administrators, or assigns, will, during the continuance of this demise, bear, pay, and discharge the ground-rent and property tax payable in respect of the premises hereby demised, and will keep the outside walls and roofs, with the outside water-pipes and shoots, and outside drains and sewers, properly cleared and cleansed, and the exterior woodwork and ironwork and outside walls properly and sufficiently painted and coloured as required to be done under the lease from the ground landlord: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said messuage and premises hereby demised, or any part thereof, shall at any time during the said term be destroyed or rendered uninhabitable by fire or tempest, then and in such case the payment of the rent hereby reserved or a proportionate part thereof, according to the extent of the damage incurred, shall be suspended until the said messuage and premises shall have been reinstated, and again rendered fit for habitation; and if any question shall arise whether the said messuage and premises, or any part thereof, shall have become uninhabitable by reason of fire or tempest, within the meaning of the aforesaid proviso, or what proportion of rent ought to be suspended on account thereof, such question shall be referred to two arbitrators, one to be appointed by each party, and such reference shall be considered a reference to arbitration within the meaning of the Common Law Procedure Act, 1854, and be subject to the provisions of the said Act relating to arbitrations. PROVIDED ALWAYS, and it is hereby FURTHER AGREED AND DECLARED, that if the lessor, his executors, administrators, or assigns, or the lessee, his executors, administrators, or assigns, shall be desirous of determining this lease or the term hereby granted at the expiration of the third or fifth year of the said term of seven years, and shall, previously to the expiration of the said third or fifth year, give or leave for the other party six calendar months' notice in writing of such desire, at his last known or most usual place of abode in England, then on the ex-

piration of the said ——— or ——— year, this present lease, and the term hereby granted, shall cease and be void, but without prejudice to the rights and remedies of the lessor, his executors, administrators, or assigns, for any arrears of rent or any breach of the lessee's covenants.

IN WITNESS, &c.

OF A  
DWELLING-  
HOUSE.

No. III.

LEASE *by* MORTGAGEE *and* MORTGAGOR.

BY  
MORTGAGEE  
AND  
MORTGAGOR.

THIS INDENTURE, made the ——— day of ———, BETWEEN Parties.  
A. B., of, &c. (in whom the legal estate in the hereditaments hereinafter demised is vested by way of mortgage) (*mortgagee*), of the first part, C. D., of, &c., being the person entitled to the equity of redemption of the hereditaments (*mortgagor*), of the second part, and E. F., of, &c., (hereinafter called "the lessee"), of the third part, WITNESSETH, that in consideration, &c., the said A. B., at the request of the said C. D., doth hereby demise, and the said C. D. doth hereby demise and confirm unto the lessee, his executors, administrators, and assigns, ALL, &c. (*parcels—Habendum to lessee, for twenty-one years, at a yearly rent, as in Precedent No. I., supra, p. 35*): AND THE lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his heirs and assigns, in manner following, that is to say (*covenants by lessee, and proviso for re-entry, as in Precedent No. I., verbatim, substituting A. B. for "lessor" throughout*): AND THE SAID C. D. doth hereby for himself, his heirs, executors and administrators, covenant with the lessee, his executors, administrators, and assigns, that the lessee, his executors, administrators, and assigns paying the rent hereby reserved, and observing and performing all the covenants hereinbefore contained, and on his and their part to be observed and performed, shall and may peaceably and quietly possess and enjoy the said premises during the said term, without any eviction or disturbance by the said C. D., his heirs or assigns, or by the said A. B., his heirs or assigns, or any person lawfully or equitably claiming from or under them, or any of them respectively: PROVIDED ALWAYS, and it is hereby agreed and declared, that the lessee, his executors, adminis-

Mortgagee and mortgagor demise to lessee.

Covenants by lessee.

Covenants by mortgagor for quiet enjoyment by lessee.

Proviso that rent may be paid to

BY  
MORTGAGEE  
AND  
MORTGAGOR.

mortgagor  
until notice  
by mort-  
gagee.

Power to  
mortgagor  
to distrain.

trators, or assigns, may pay the rent hereby reserved unto the said C. D., his heirs, or assigns, until the said A. B., his heirs, or assigns, shall require the payment to himself or themselves of the said rent by a notice in writing, to be given to the said E. F., his executors, administrators, or assigns, or left for him or them at or upon the said demised premises, and the receipt of the said C. D., his heirs and assigns, for all rent paid to him or them until the giving or leaving of such notice as aforesaid, shall be a sufficient discharge for the same: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that in the meantime and until the giving or leaving of such notice as aforesaid, the said C. D., his heirs and assigns, shall have the like remedy by distress for recovery of arrears of the said rent as he or they would have had if seised at law of the hereditaments in reversion expectant on the term hereby granted.

IN WITNESS, &c.

No. IV.

LEASE BY  
TENANTS IN  
COMMON OF  
WHARF,  
MACHINERY,  
ETC.

*LEASE by Tenants in Common of WHARF, MACHINERY, and other Premises for a term of Sixty Years; COVENANTS by LESSEE for payment of Rent and Taxes; for Repairs; for Insurance, &c.; PROVISIO for RE-ENTRY: COVENANT by LESSOR for LESSEE's quiet enjoyment during Term; PROVISIO for determining the Term at the end of Fourteen, Twenty-eight, or Forty-two Years by LESSEE on his giving Six Months' Notice.*

Parties.

Witnesseth.

Lessor's  
demise,

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c., and C. D., of, &c. (*lessors*), of the one part, and E. F., of, &c. (*lessee*), of the other part: WITNESSETH, that in consideration of the rent hereinafter reserved, and of the covenants hereinafter contained, and on the part of the said E. F., his executors, administrators, and assigns, to be observed and performed, THE said A. B. and C. D. (being tenants in common of the property intended to be hereby demised), do, and each of them doth hereby grant and demise unto the said E. F., his executors, administrators, and assigns, ALL THAT messuage or dwelling-house, &c., and also all that piece or parcel of ground,

&c., with the warehouses, offices, or buildings, and other erections now standing and being thereon: AND ALSO ALL THAT wharf adjoining thereto, now called and known by the name of — wharf, situate lying, and being within the precincts of —, in the county of Middlesex, and bounded, &c., and now in the occupation of —, and all of which said hereditaments and premises are more particularly described or delineated in the map or plan drawn in the margin of the first skin of these presents: AND ALSO the use and enjoyment of all the machinery, cranes, fixtures, implements, utensils, and things which now are in or upon the said premises, and the particulars whereof are specified in the schedule hereunto annexed: TO HAVE AND TO HOLD the premises hereby demised, or expressed so to be, unto the said E. F., his executors, administrators, and assigns, from the — day of —, 18—, for the term of sixty years thence next ensuing, YIELDING AND PAYING during the said term the yearly rent of £—, by equal half-yearly payments, on the — day of —, and the — day of —, without any deduction (except for the land tax and landlord's property tax), the first payment of the said rent to be made on the — day of — now next ensuing. AND THE SAID E. F. doth hereby covenant with the said A. B. and C. D., their heirs and assigns, in manner following (that is to say), THAT THE SAID E. F., his executors, administrators, and assigns, will, &c. (*to pay rent, and rates, and taxes, supra*, p. 35); and also will at all times during the said term, at his and their own cost, as often as occasion shall require, well and sufficiently repair, support, maintain, and keep in good and substantial repair and condition the messuage, wharf, machinery, and premises hereby demised, or expressed so to be, and all other the erections and buildings which shall at any time during the said term be erected and set up in or upon the said demised premises, and the same in such good and substantial repair and condition, shall and will, at the expiration or other sooner determination of the said term of sixty years, peaceably and quietly surrender unto the said A. B. and C. D., their heirs and assigns, the reasonable use and wear thereof in the meantime only excepted: AND FURTHER, that the said E. F., his executors, administrators, and assigns, shall and will permit the said A. B. and C. D., their heirs and assigns, with or without workmen and others, twice or oftener in every year during the said term hereby granted, at convenient times in the daytime, into and

LEASE BY  
TENANTS IN  
COMMON OF  
WHARF,  
MACHINERY,  
ETC.

messuage,  
wharf, and  
premises.

Lessor  
demises pre-  
mises and  
use of  
fixtures.

Habendum  
to lessee

for sixty  
years.

Covenant by  
lessee to pay  
rent and  
taxes,  
and to  
repair  
premises  
during  
term;

and to  
surrender at  
determina-  
tion of term  
in good  
repair;

and to  
permit  
lessors to  
enter to  
view pre-  
mises dur-  
ing term.

LEASE BY  
TENANTS IN  
COMMON OF  
WHARF,  
MACHINERY,  
ETC.

Covenant by  
lessee to  
insure and  
keep  
insured,

and to  
produce  
receipts.

Proviso for  
re-entry.

Covenants  
by lessors  
for quiet  
enjoyment  
by lessee.

upon the said demised premises, or any part thereof, to enter and view and examine the statement and condition thereof, and of all such decays, defects, and wants of reparation as shall be found upon every such view to give to the said E. F., his executors, administrators, or assigns, or leave for him or them, at or on the said demised premises, or any part thereof, notice in writing to repair or amend the same within the space of three calendar months, then next following, within which said space of three calendar months, he the said E. F., his executors, administrators, and assigns, will repair and amend the same accordingly: AND ALSO that the said E. F., his executors, administrators, or assigns, shall and will, at his and their own cost, at all times during the said term, keep insured the said messuage and premises hereby demised, including all erections and buildings which at any time or times during the said term may be erected and built upon the said premises, from loss or damage by fire, in the joint names of the said A. B. and C. D., their heirs or assigns, and of the said E. F., his executors, administrators, or assigns, in the — Insurance Office, or in some other office or offices in London or Westminster, in a sufficient sum to cover the value of the premises to be so insured, and shall and will for that purpose pay all premiums and sums of money which shall become payable in respect of every such insurance, and shall from time to time, when required, produce to the said A. B. and C. D., and their respective heirs and assigns, the receipt for every such payment; and that all moneys which shall be received from time to time under or by virtue of any such insurance as aforesaid shall be forthwith laid out and applied in or towards the rebuilding and repairing the said messuage and premises, or such part thereof as shall be burnt down or damaged by fire: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said yearly rent of £—, or any part thereof, shall be in arrear for the space of twenty-one days next after any of the said days on which the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if the said E. F., his executors, administrators, or assigns, shall not perform all the covenants hereinbefore contained, and on his or their part to be observed and performed, then and in any of the said cases it shall be lawful for the said A. B. and C. D., their heirs and assigns, into and upon the said demised premises, or any part thereof, in the

name of the whole, to re-enter, and the same to have again, re-possess, and enjoy as in their first or former estate (*declaration as to payment of proportionate part of rent, supra*, p. 37): AND THE SAID A. B., as to one undivided moiety of and in the premises hereby demised, and the said C. D., as to the other undivided moiety of and in the same premises, do hereby for themselves respectively, and their respective heirs, executors, and administrators, covenant with the said E. F., his executors, administrators, and assigns, that the said E. F., his executors, administrators, and assigns, paying the said yearly rent in manner aforesaid, and observing and performing all the covenants hereinbefore contained on his or their part to be observed and performed, shall and may peaceably and quietly hold and enjoy the said premises during the said term hereby granted, without any eviction or disturbance by the said A. B. and C. D., their heirs or assigns, or any person or persons lawfully or equitably claiming, or to claim from, under, or in trust for them respectively: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the said E. F., his executors, administrators, or assigns, shall be desirous of determining the said term of sixty years, at the expiration of the first fourteen years, twenty-eight years, or forty-two years of the said term, and of such his or their desire shall deliver to the said A. B. and C. D., their heirs or assigns, or leave at their respective usual or last known places of abode in England or Wales six calendar months' previous notice in writing, and shall pay and discharge all arrears of rent, and perform all the covenants hereinbefore contained, and on his and their part to be observed and performed, then and in such case, at the expiration of the said term of fourteen years, twenty-eight years, or forty-two years (as the case may be), this present lease and everything herein contained shall absolutely cease and determine.

LEASE BY  
TENANTS IN  
COMMON OF  
WHARF,  
MACHINERY,  
ETC.

Proviso for  
determining  
term on  
notice by  
lessee at the  
end of  
fourteen,  
twenty-  
eight, or  
forty-two  
years.

IN WITNESS, &c.

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THE SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

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## No. V.

BUILDING  
LEASE  
UNDER  
POWER.

BUILDING LEASE for *Ninety-nine Years granted by*  
*a TENANT for LIFE under a Power.*

Parties. THIS INDENTURE, made the — day of —, BETWEEN  
A. B., of, &c. (hereinafter called “the lessor”), of the one part,  
and C. D., of, &c. (hereinafter called “the lessee”), of the other  
Witnessing part, WITNESSETH, that in consideration of the rent and  
lessee’s covenants hereinafter reserved and contained, the lessor  
in pursuance of all powers enabling him in this behalf doth hereby  
appoint and demise unto the lessee, ALL THAT piece or parcel  
of ground, &c., TOGETHER WITH full and free liberty of ingress,  
egress, and way, with or without horses, cattle, carts, and other  
carriages, in, over, and upon the roadway made or intended to  
be made at the back of the said piece of ground, as shown in  
the plan drawn in the margin of these presents, AND ALL ease-  
ments, and appurtenances to the said piece or parcel of ground  
belonging or appertaining, TO HOLD the premises hereby demised,  
or expressed so to be, unto the lessee, from the — day of —  
last, for the term of ninety-nine years thence next ensuing, YIELD-  
ING AND PAYING for the first year of the said term the rent of a  
peppercorn, if demanded, and, during the residue of the said  
term, the yearly rent of £20 sterling, by equal quarterly pay-  
ments on the — day of —, the — day of —, the —  
day of —, and the — day of —, free from all taxes, rates,  
and assessments whatsoever (except the landlord’s property tax,  
if any), the first of such quarterly payments to be made on  
the — day of —: AND THE lessee doth hereby for him-  
self, his heirs, executors, administrators and assigns, covenant  
with the lessor in manner following (that is to say), THAT  
the lessee will pay to the lessor the yearly rent hereby reserved,  
at the times and in manner hereinbefore appointed: AND ALSO  
WILL, during the said term, pay all taxes, rates, charges, and  
assessments which shall be payable for or in respect of the said  
premises hereby demised (except the landlord’s property tax, if  
any): AND ALSO WILL, at his own cost, and at an outlay and  
expense of £— at the least, within the space of — calendar  
months from the day of the date thereof, in a good substantial  
and workmanlike manner, of the best material, and to the

Lessor  
demises pre-  
mises and  
a right of  
way to lessee  
for ninety-  
nine years.

Covenant by  
lessee to pay  
rent,

and to pay  
taxes,

and to build  
a dwelling-  
house with-  
in a specified  
time,

BUILDING  
LEASE  
UNDER  
POWER.

satisfaction of the surveyor of the lessor, erect, build, and completely finish, fit for habitation and use, upon the front of the said piece of land towards the ——— Road, at the distance of ——— feet from the boundary line of such road coloured red in the said plan, a good and substantial brick messuage or tenement, of the rate of building, character, and description in every respect specified and set forth in the specification indorsed on these presents and signed by the lessor and the lessee, with a two-stalled stable and double coach-house, as mentioned in such specification, and all such out-buildings, conveniences and sewers as shall be necessary or proper to be used with such messuage or tenement for rendering the same commodious: AND ALSO WILL forthwith, after the completion of the said messuage and buildings to be erected as aforesaid, insure or cause to be insured the same to at least two-thirds of the value thereof, in the joint names of the lessor and lessee, and either in conjunction or not in conjunction with the name or names of any underlessee or underlessees, or other person or persons interested therein, in one of the public fire insurance offices in London or Westminster, and will during the said term keep the same so insured, and upon the request of the lessor, or his surveyor, steward, or agent, from time to time produce and show to him or them the receipt for the premium for such insurance for the then current year, and so often as such messuage and buildings, or any part thereof, shall be destroyed or damaged by fire, forthwith rebuild or reinstate the same, under the direction of the lessor, or his surveyor: AND ALSO will at all times during the said term keep the said messuage and premises in good and substantial repair, and the same in such good and substantial repair at the end or sooner determination of the said term, peaceably surrender and yield up unto the lessor together with all things in the nature of or usually considered landlord's fixtures, which at any time during the said term shall be affixed and belong to the premises: AND ALSO will at all times during the said term, pay and allow a reasonable share and proportion for and towards the costs and expenses of making, supporting, and preparing the said roadway or intended roadway at the back of the said piece of ground, and all or any pavements, fences, and party walls, sewers, and drains, which now or at any time during the said term shall belong to the said premises or any part thereof, in common with other messuages or tenements or lands, and that such proportion shall

and to  
insure,

and to  
produce to  
the lessor  
receipts for  
premiums,

and keep  
premises in  
repair, and  
deliver up  
the premises  
in good  
repair at the  
end of the  
term,

and pay  
proportion  
of expense  
of repairing  
roadway  
party walls,  
&c.



**BUILDING  
LEASE  
UNDER  
POWER.**

Lessor may enter pre-  
mises at any  
time to view  
the condi-  
tion thereof.

Lessor and  
occupiers of  
adjoining  
houses may  
enter to re-  
pair such  
houses.

Lessor to  
have liberty  
of water-  
course.

Lessee to use  
messuage  
only as a  
dwelling-  
house.

Power of  
re-entry in  
case rent  
should be in  
arrear, or  
covenants  
should be  
broken.

be ascertained by the surveyor of the lessor, and shall be recoverable as rent in arrear: AND ALSO THAT it shall be lawful for the lessor, or any person or persons to be deputed by him, with or without workmen or others, twice or oftener in every year during the said term, at reasonable times in the day-time, to enter upon the said premises or any part thereof, to view the state and condition thereof, and also at any time during the last seven years of the said term to take a schedule of the fixtures and things, in and upon the premises (not being tenant's fixtures), and also that it shall be lawful for the lessor and his tenants or occupiers of the houses adjoining to the said premises, and the workmen of such lessor, tenants, or occupiers, at reasonable times in the daytime, to come into or upon the said premises, or any part thereof, to repair such adjoining houses as often as occasion shall require: AND ALSO that the lessor and his tenants shall have liberty of water-course in and through the said premises hereby demised to carry off the water from his other houses, which are or may be contiguous or near to the said premises, and that if need be the tenants of such other houses shall be permitted to come into and upon the said premises hereby demised to empty and cleanse the cesspools, gutters, sewers, and drains of and belonging to such other houses: AND ALSO that the lessee will not, without the consent in writing of the lessor, exercise or carry on, or permit or suffer to be exercised or carried on upon any part of the premises hereby demised, any trade or business whatsoever, but shall keep the said messuage and premises strictly as a private dwelling-house: and shall not, without such consent, assign or underlet the said premises hereby demised, or any part thereof, or permit or suffer the same, or any part thereof, to be assigned or underlet unto any person or persons whomsoever: PROVIDED ALWAYS, and it is hereby declared, that if the said yearly rent of £—— or any part thereof, shall be in arrear for the space of twenty-one days next after any of the days whereon the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if there shall be any breach of any of the covenants hereinbefore contained and on the part of the lessee to be observed and performed, then and in any of the said cases it shall be lawful for the lessor at any time thereafter, into and upon the said demised premises, or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess and enjoy as in his first or former estate;

PROVIDED ALSO that no re-entry shall be made under the power last hereinbefore contained for or in respect of any breach of the covenant to keep the said messuage and premises in repair unless and until the lessor shall have given to the lessee or left at or upon the said demised premises a notice in writing specifying the repairs which ought to be done and the lessee shall have neglected to do such repairs for the space of six calendar months after the giving or leaving of such notice: AND the lessor doth hereby covenant with the lessee that the lessee paying the rent hereby reserved and observing and performing the lessee's covenants herein contained shall, during the said term, peaceably and quietly possess and enjoy the said demised premises without any interruption by the lessor, or any person rightfully claiming under him: AND IT IS HEREBY DECLARED that, except where the context may require a different construction, the expression "the lessor," hereinbefore used, shall be deemed to include every person for the time being entitled to the premises hereby demised in reversion expectant on the term hereby granted, and the expression "the lessee" shall be deemed to include the executors, administrators, and assigns of the said C. D.

IN WITNESS, &c.

BUILDING  
LEASE  
UNDER  
POWER.

Power of  
re-entry  
not to be  
exercised  
for want of  
repair until  
after notice.

Meaning of  
terms lessor  
and lessee.

No. VI.

BUILDING LEASE to a Person who COVENANTS to complete TEN HOUSES with provisions for APPORTIONING RENT between the SEVERAL HOUSES. The land demised is PART of a CONSIDERABLE ESTATE let on similar leases to OTHER PERSONS.

BUILDING  
LEASE.

THIS INDENTURE, made the — day of — BETWEEN A. B., of, &c., and C. D., of, &c. (hereinafter called "the lessors") (lessors), of the one part, and E. F., of, &c. (hereinafter called "the lessee") (lessee), of the other part, WITNESSETH, that in consideration of the expenses incurred and to be incurred by the lessee in and about the erection and completion of the messuages or dwelling-houses hereinafter mentioned, and of the rent hereinafter reserved, and the lessee's covenants hereinafter contained, the lessors do hereby demise unto the lessee, ALL THAT piece or parcel of land situate in — Street in — aforesaid, the dimensions and boundaries whereof are shown and delineated on the plan drawn in the margin of these presents and therein coloured pink, TOGETHER with the ten several messuages or

Lessors  
demise  
parcels

BUILDING  
LEASE.

to lessee for  
ninety-nine  
years,  
subject to  
rent.

Covenants  
by lessee to  
pay rent and  
taxes,

to fence off  
premises,

to complete  
houses.

Not to erect  
any other  
buildings  
without  
license,

dwelling-houses now in course of erection thereon, AND together also with the use of in common of all roads and sewers made or hereafter to be made for the accommodation of the owners and occupiers of the estate of the lessors (except and reserved out of this demise all mines and minerals whatsoever, with liberty for the lessors to dig, search for, win, convert, and carry away the same on making reasonable compensation to the lessee for the damage which shall be sustained by him or them thereby): To HOLD the premises unto the lessee for the term of 99 years, to be computed from the 29th day of September, 18—, YIELDING AND PAYING therefor yearly during the said term the rent of £—, by equal half-yearly payments, on the 25th day of March and the 29th day of September in every year, the first payment to be made on the — day of — next: AND THE lessee doth hereby covenant with the lessors, in manner following, that is to say, THAT the lessee will pay the yearly rent hereby reserved on the days and in the manner hereinbefore appointed for payment thereof, and all taxes, rates and charges, and impositions whatsoever, whether parliamentary, parochial, or otherwise (except the landlord's property-tax), payable for the time being in respect of the said premises hereby demised, or any part thereof, or the landlord or tenant of the same in respect thereof: AND ALSO will forthwith well and sufficiently fence off the said premises hereby demised from the adjoining property: AND ALSO will within the space of — from the date of these presents, at his (the lessee's) own expense, erect, complete, and finish in and upon the said premises, in a workmanlike and substantial manner, under the inspection and to the satisfaction of the surveyor for the time being of the lessors, the said messuages or dwelling-houses, with proper and suitable out-buildings, walls, yards, drains, and other conveniences, and with a paved footway in front of the same according to the specification and plan deposited with the lessors, and signed by the lessee, and that in erecting and building the said messuages or dwelling-houses, the description, substance, and scantlings of materials to be used shall be subject to the inspection and approbation of such surveyor as aforesaid: AND ALSO that he the lessee will not, without the previous license in writing of the lessors or their surveyor, erect, or set up, or suffer to be erected or set up on any part of the said premises hereby demised, any messuage or building other than and except the messuages or dwelling-houses hereby covenanted to be erected and except out-buildings to be occupied and used therewith, not

exceeding 15 feet in height to the ridge of the roof, and 200 superficial feet in area, and will not without such license as aforesaid, make any alteration in the plan or elevation of the said messuages, or dwelling-houses, or in any party wall, or in the principal or bearing walls or timbers, or make or suffer to be made on the said premises, any bricks, tiles, or other wares, or carry on or permit to be carried on, any noisy, noxious, or offensive trade or manufacture, or permit the said premises to be used for any illegal or immoral purpose, or for a public house, inn, tavern, or beer-shop, or otherwise for the sale of wine, malt liquors, or spirituous liquors, or do or suffer to be done thereon any act or thing whatsoever which may be an annoyance or disturbance to the lessors or their tenants in the neighbourhood :

AND ALSO that the lessee will from time to time and at all times during the said term, well and substantially repair, maintain cleanse, and pave, and in good and substantial repair and condition keep the messuages or dwelling-houses and other buildings so to be erected as aforesaid, and appurtenances belonging thereto, and the said footway in front, and the same so repaired maintained, cleansed, paved, and kept will quietly surrender and yield up unto the lessors on the determination of the said term :

AND will pay a reasonable proportion (to be ascertained by such surveyor as aforesaid) of the expense of supporting and repairing all roads, ways, sewers, drains, party walls, watercourses, and easements, used or to be used, or capable of being used, in common by the occupiers of the said premises hereby demised, with the occupiers of the adjoining property, except the expense of making the main streets and main sewers which are intended to be made by and at the expense of the lessors, but including the expense of maintaining, cleansing, and keeping in repair the same when made, unless and until such expense shall be defrayed by or out of rates to be levied for that purpose, which rates the said lessee will be liable to pay under the covenant in that behalf hereinbefore contained :

AND ALSO will paint twice, in oil, in a proper and sufficient manner, once in every ten years of the said term, the inside of the said messuages and buildings usually painted, or which ought to be painted :

AND ALSO once in every five years of the said term, the outside of the same, usually painted or which ought to be painted :

AND FURTHER, that it shall be lawful for the workmen of the lessors, or of their tenants or occupiers of houses adjoining or near to the said

BUILDING LEASE,  
 or alter plan or elevation  
 or carry on noisy, noxious, or offensive trade.  
 To repair,  
 and surrender in good repair at the end of term,  
 to pay a reasonable proportion of expense of repairing common roads, &c.,  
 to paint inside every ten years, and outside every five years.  
 That workmen from adjoining houses may enter to

BUILDING  
LEASE.

cleanses  
drains, &c.

That lessors  
may have  
liberty of  
water-  
course.

To insure,

to give  
notice to  
lessors of all  
assign-  
ments.

That lessors  
may enter to  
view state of  
repair.

premises hereby demised, at all reasonable times of the day, to enter into and upon the said demised premises and the messuages and buildings so to be erected as aforesaid, for the purpose of cleansing drains and for repairing any of the adjoining houses as often as occasion shall require: AND that the lessors and their tenants shall have free liberty of watercourse in, through and under the said demised premises, to carry off the water and sewage from the adjoining or contiguous property: AND that the lessee will at all times during the said term, insure and keep insured from loss or damage by fire, the messuages and buildings to be so erected as aforesaid, to the amount of four-fifths at least of the value thereof, such value to be ascertained by such surveyor as aforesaid, whose certificate of value shall be conclusive, in the names of the lessors and of the lessee for the time being (or in such other manner as the lessors shall, on the request of the lessee, approve) in the — insurance office, or in some other insurance office to be previously approved in writing by such surveyor as aforesaid, and will from time to time upon the request of the lessors or such surveyor as aforesaid, produce and show to them or him the policy of such insurance and also the receipt for the premium of such insurance for the next ensuing year: AND ALSO that he the lessee will, as often as the said messuages and buildings so to be erected as aforesaid, or any of them, shall be destroyed or damaged by fire or other accident, immediately lay out and apply the money to be received by virtue of any such insurance as aforesaid, and also all such other sums of money (if any) as shall be necessary for that purpose, in well and substantially rebuilding, repairing, and reinstating the same under the inspection and to the satisfaction of such surveyor as aforesaid: AND ALSO that the lessee will, upon every assignment of the said premises hereby demised, or any part thereof, or within twenty-one days thereafter, deliver a notice of such assignment to the lessors or their solicitor, setting forth the names and description of the parties to every such assignment, and the particulars and effect thereof: AND ALSO that it shall be lawful for the lessors or their surveyor or agent for the time being, with or without workmen or others, from time to time, and at all reasonable times of the day during the said term, to enter into and upon the said demised premises and the messuages and buildings to be erected thereon as aforesaid, or any part thereof, and inspect and view the condition thereof<sup>f</sup>

and during the last seven years of the said term to take an inventory of the fixtures and other things then in or about the same, and if any defect or want of reparation shall be on any such inspection found and discovered, to give to the lessee or leave for him at or upon the said premises or some part thereof, notice in writing to make good and restore the same, and that the lessee will, within six calendar months next after such notice, well and sufficiently make good and restore the same accordingly :

PROVIDED ALWAYS, that if the said yearly rent hereby reserved, or any part thereof, shall at any time be unpaid by the space of twenty-one days after the same shall have become due, whether the same shall have been lawfully demanded or not, or in case of the breach, by the lessee of any of the covenants herein on his part contained, then and in any such case it shall be lawful for the lessors, notwithstanding the waiver of any previous cause or right of re-entry, to enter into and upon the said demised premises and the messuages and buildings so to be erected as aforesaid, or any of them or any part thereof, in the name of the whole, and to re-possess, retain, and enjoy the same as of their former estate: PROVIDED ALWAYS, that no re-entry shall be made under the foregoing power for any breach of the covenants to keep the premises in repair or to paint the outside or inside of the premises unless and until the lessor shall have given to the lessee or left for him upon the demised premises a notice in writing requiring him to do the repairs or painting which ought to have been done under such covenants, and the lessee shall have failed to comply with such notice for the space of six calendar months after the giving or leaving of such notice: PROVIDED ALWAYS, and it is hereby agreed and declared, that if the lessee (including any person or persons in favour of whom an apportionment of rent shall then already have been made under this present proviso, his or their executors, administrators, or assigns) shall at any time or times during the said term hereby granted, assign any one or more of the messuages or tenements so to be erected as aforesaid (not being the whole of the premises then vested in him or them), then and in every such case such surveyor as aforesaid shall, if and when requested so to do by any party entitled under such assignment, determine what portion of the rent hereby reserved shall thenceforth be payable in respect of the premises comprised in such assignment, and what portion

BUILDING:  
LEASE.

Power of  
re-entry on  
non-pay-  
ment of rent  
or breach of  
covenants.

No re-entry  
to be made  
for breach of  
covenant in  
reference  
until after  
notice.

Proviso for  
apportion-  
ment of rent  
between the  
several  
houses on  
assignment.

BUILDING  
LEASE.

thereof shall thenceforth be payable in respect of the premises vested in the person or persons making the same assignment, and a memorandum of such apportionment, signed by the lessors or the said surveyor, shall be endorsed on these presents, and the counterpart thereof or other document under which the apportioned rent shall be payable, and from and after the endorsement of such memorandum the person or persons to whom such assignment shall be made, his or their executors, administrators, and assigns, shall hold the premises comprised therein, subject only to the payment of the apportioned rent so to be made payable in respect thereof as aforesaid, and to the observance and performance of the covenants and conditions herein contained on the part of the lessee to be observed and performed so far as the same shall be applicable to the last-mentioned premises in the same manner as if a separate lease of the same premises had been granted to him, her, or them, at and under such last-mentioned apportioned rent, covenants, and conditions, so far as the same shall be applicable as aforesaid respectively, and the person or persons making such assignment as aforesaid, his or their executors, administrators, and assigns shall hold the premises remaining vested in him, her, or them subject only to the payment of the apportioned rent so to be made payable in respect thereof as aforesaid, and to the observance and performance of the covenants and conditions herein contained on the part of the lessee so far as the same shall be applicable to the last-mentioned premises, in the same manner as if a separate lease of the same premises had been granted to him, her, or them, at and under such last-mentioned apportioned rent, and subject to such covenants and conditions so far as the same shall be applicable as aforesaid respectively, and so *toties quoties* upon every subsequent division by assignment of part of the premises held under an apportioned rent: PROVIDED ALSO, and it is hereby agreed and declared, that no apportioned rent shall in any case be less than the sum of thirty shillings or exceed one-fifth part of the rack rent value of the land in respect whereof the same shall be apportioned, and the buildings erected or to be erected thereon, when finished and fit for habitation, and that until all the said messuages and tenements hereinbefore covenanted to be erected shall be completed and rendered fit for habitation, the lessee shall only be entitled to apportionment in respect of such of

the said messuages or tenements as shall be so completed and rendered fit for habitation (*covenant by lessor for quiet enjoyment, supra, p. 51*): AND IT IS HEREBY LASTLY AGREED AND DECLARED, that the heirs and assigns of the lessors, and the executors, administrators, and assigns of the lessee shall be bound by and entitled to the benefit of these presents and the covenants and conditions herein contained in like manner as if they had been respectively named herein next after the words "lessors" and "lessee" respectively throughout, as far as the same will admit, and unless the context or the nature of the case may require a different construction.

IN WITNESS, &c.

BUILDING  
LEASE.  
—  
Operation of  
words  
"lessors"  
and  
"lessee."

No. VII.

LEASE of a MANUFACTORY and PREMISES for CARRY-  
ING on the BUSINESS of making and selling  
CEMENTS.

LEASE OF  
PREMISES  
FOR MAKING  
AND SELLING  
CEMENTS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (hereinafter called "the lessor"), of the one part, and C. D., of, &c. (hereinafter called "the lessee"), of the other part, WITNESSETH that in consideration of the rent and royalties hereinafter reserved, and of the covenants hereinafter contained, and on the part of the lessee to be observed and performed, the lessor doth hereby grant and demise unto the lessee: FIRST, ALL that tenement chiefly used as an engine house, situate in and fronting — Street, in the city of —, which said premises are more particularly delineated in the map or plan drawn in the margin of the first skin of these presents, and therein coloured blue: AND THE USE and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises: AND SECONDLY, ALL and singular the manufactories, buildings, boiler houses, kilns, erections, offices, buildings, and premises, situate between — Street and — Quay, in the said city of —, which said premises secondly hereinbefore described are more particularly delineated in the said map or plan, and therein coloured red: AND THE USE and enjoyment of all the machinery, fixtures, implements, utensils, and things which now are in or upon the said premises secondly hereinbefore described (EXCEPTING nevertheless and reserved unto the

Parties.

Lessor  
demises to  
lessee.

Parcels.

Use of  
machinery  
&c.



LEASE OF  
PREMISES  
FOR MAKING  
AND SELLING  
CEMENTS.

persons in favour of or to whom the same have previously to the date of these presents been accepted and reserved, all the rooms which form the upper story of the several buildings hereby demised, and the absolute use and enjoyment thereof, whether for the purpose of business or otherwise howsoever, and unto the same persons and their servants, workmen, or any other persons on their behalf, and (as to the piece of land coloured brown in the said map, either on foot, or by means of carts or other vehicles, horses or other animals), full and free right and liberty of ingress, egress, regress, passage, and way at all times over the said piece of land coloured brown on the said plan from the point at which the said piece of land adjoins the — Quay, and by all the other internal and external passages and ways by which the said rooms respectively are or can be now approached from the said street from the point aforesaid): TO HAVE AND TO HOLD all the said premises hereby demised, or expressed so to be, unto the lessee for the term of fifteen years from the 25th day of March next: YIELDING AND PAYING in respect of the premises hereby demised every year during the said term of fifteen years the clear yearly rent of £200: AND YIELDING AND PAYING every year during the said term of fifteen years a royalty of — per bushel in respect of all cements which shall be made or manufactured and sold by the lessee, or any person on his behalf, either on the premises hereby demised, or any part thereof, or on any other premises, or in any other place or places whatsoever, such rent and royalties to be paid by equal quarterly payments on the — day of —, the — day of —, the — day of —, and the — day of —, clear of all deductions (except the property or income tax), the first quarterly payment of the said rent and royalties respectively to be made on the — day of — next: AND THE LESSEE doth hereby covenant with the lessor: THAT the lessee shall pay to the lessor the said rent and royalties respectively on the days whereon the same respectively are hereinbefore made payable, and shall also pay and discharge all present and futures taxes, charges, rates, and assessments payable in respect of the said premises hereby demised, by authority of parliament or otherwise (except the property or income tax): AND ALSO shall, at all times during the said term of fifteen years, carry on within the said city of — the business of making or manufacturing cements, and selling the same there and elsewhere to the best possible

To hold to  
lessee for  
fifteen  
years,

at yearly  
rent,

and subject  
to royalties  
for cements  
made and  
sold.

Covenant by  
lessee to pay  
rent and  
royalties,

and to pay  
rates and  
taxes,

advantage: AND ALSO shall, at all times during the said term, keep proper books of account on the said premises hereby demised, or on some part thereof, and shall from time to time make such entries therein as shall clearly show the quantity of cement which shall from time to time be manufactured and sold by the lessee, or any person on his behalf, and also the amount, of royalties which shall from time to time become payable in respect thereof, and also all other matters which ought to be entered in such books in relation to the said business: AND ALSO shall, on the first day of every month during the said term, at his own expense, supply the lessor with a proper and faithful account in writing of all the cements which shall have been manufactured and sold as aforesaid during the then preceding month, together with all vouchers and such other evidence as may be required in order clearly to show the accuracy of such account, and shall, if and when required so to do by the lessor further verify every such account by the statutory declaration of the lessee: AND ALSO, that in case the said rent and royalties hereby reserved, or any of them, or any part thereof respectively shall, at any time or times during the said term fail to be paid at the times and in the manner hereinbefore provided for this purpose, then (in addition to the powers of distress and entry which he or they may possess independently of any special clause to this effect) it shall be lawful for the lessor, into or upon the said premises hereby demised, or any part thereof, or any other premises wherein or whereupon the said business may, for the time being, be carried on, to enter and distrain for the same rent and royalties so in arrear, and the distress or distresses there found to impound and detain, sell and dispose of in such manner as landlords are by law authorised to do in respect of arrears of rent reserved upon common demise, to the intent that the lessor may by such distress or distresses be from time to time satisfied all such rent and royalties as may be so unpaid as aforesaid, and all costs and expenses occasioned by non-payment or default in payment thereof: AND ALSO that the lessee shall insure, and at all times during the said term keep insured, all the cements and other stock in trade which shall for the time being be upon the said premises hereby demised, or any other such premises as aforesaid or which otherwise may be engaged or employed in the said business, in some insurance office or offices in London or Westminster: AND ALSO in the event of any such cement or

LEASE OF  
 PREMISES  
 FOR MAKING  
 AND SELLING  
 CEMENTS.

to carry on  
 business of  
 making and  
 selling  
 cements  
 during the  
 term,  
 to keep  
 books of  
 account,  
 to supply  
 accounts.

Power of  
 distress.

Covenant by  
 lessee to  
 insure,

LEASE OF  
PREMISES  
FOR MAKING  
AND SELLING  
CEMENTS.

to keep in  
repair,

and to  
deliver up  
premises in  
good repair  
at expira-  
tion of term.

Power of  
lessor to  
enter and  
view condi-  
tion of  
premises.

Power of  
re-entry on  
non-pay-  
ment of rent  
or royalties,  
or in breach  
of cove-  
nants, &c.

Covenant by  
lessor for  
quiet enjoy-  
ment.

Power to  
lessee to  
determine at  
expiration  
of any year  
by giving  
notice.

stock in trade being destroyed by fire, shall lay out the moneys which shall arise by reason of the insurance thereof in replacing all such cements and stock in trade as may be so destroyed:

AND ALSO shall, at all times during the said term, keep in good and substantial repair and condition, all and singular the buildings and machinery, utensils, implements, and things hereby demised, and all other the erections and buildings which shall at any time during this demise be erected or set up upon the said premises, and the same in such good and substantial repair shall, at the expiration or sooner determination of the said term peaceably and quietly surrender and yield up to the lessor (reasonable wear and tear thereof in the meantime only excepted):

AND ALSO shall permit the lessor with or without workmen and others, at any time or times during the said term, into and upon the said premises, or any part or parts thereof, to enter and view and examine the state and condition thereof, and all such decays, defects, and wants of reparation as shall be found upon such view, to give or leave a notice in writing at or in the said demised premises, or any part thereof, to repair and amend the same within the space of one calendar month next following, within which space of one calendar month next after every such notice the lessee shall repair and amend the same decays, defects, and wants of reparation accordingly: PROVIDED ALWAYS, and it is hereby declared, that if the said rent and royalties hereby reserved, or any of them, or any part thereof respectively shall be in arrear for the space of fourteen days next after any of the said days on which the same ought to be paid as aforesaid, whether the same shall or shall not have been legally demanded, or if the lessee shall commit any breach of any of the covenants hereinbefore contained, and on the lessee's part to be observed and performed, or if the lessee shall become bankrupt, or shall compound or arrange with his creditors, or suffer his effects to be taken in execution, or himself to be outlawed, then and in any of the said cases it shall be lawful for the lessor, into and upon the said demised premises, or any part thereof, in the name of the whole, to re-enter, and the same to have again, retain, repossess, and enjoy, as in his former estate: AND the lessor doth hereby covenant with the lessee that, &c. (*covenant for quiet enjoyment, supra*, p. 51): PROVIDED ALWAYS, and it is hereby declared, that if the lessee shall be desirous of determining this present lease at the expiration of any year of the said term

hereby granted, and shall deliver to the lessor, or leave at his usual or last known place of abode in England or Wales six calendar months' notice in writing to that effect, then and in such case this present lease shall cease and determine accordingly, without prejudice nevertheless to the remedies of the lessor for or in respect of any rent or royalties then in arrear, or for or in respect of any previous breach of any of the covenants hereinbefore contained on the part of the lessee. (*Declaration as to operation of words lessor and lessee, supra, p. 57.*)

LEASE OF  
PREMISES  
FOR MAKING  
AND SELLING  
CEMENTS.

IN WITNESS, &c.

No. VIII.

LEASE of a FARM from YEAR to YEAR, *excluding the operation of the AGRICULTURAL HOLDINGS ACT, 1875.*—(*A Lady-day taking*) (e).

OF A FARM  
FROM YEAR  
TO YEAR.

MEMORANDUM OF AGREEMENT, made the — day of —, BETWEEN A. B., of, &c. (hereinafter called "the landlord"), of the one part, and C. D., of, &c. (hereinafter called "the tenant"), of the other part.

THE LANDLORD agrees to let, and the TENANT agrees to take, the farm and lands situate in the parish of —, in the county of —, described in the first part of the schedule hereto, upon and subject to the terms and conditions set forth in the other parts of the said schedule.

Agreement  
by landlord  
and tenant  
to let and  
take.

THE SCHEDULE ABOVE REFERRED TO.

Schedule.

PART I.—THE FARM AND LANDS THE SUBJECT OF THIS DEMISE.

First part.

ALL that farm and lands situate in the parish of —, in the county of —, known as "— Farm," and consisting of the following particulars: namely—

Description  
of farm.

No. on Parish Map.	Description.	State.	Quantity.

(e) It will be borne in mind that the terms of a tenancy from year to year, as well as of a lease for years, vary according to the custom of the country in which the property lies.

OF A FARM  
FROM YEAR  
TO YEAR.

Second part.  
—Except-  
tions and  
reservations.

1. Timber,  
&c.

2. Game, &c.

## PART II.—EXCEPTIONS AND RESERVATIONS.

1. ALL timber, and timber-like trees, tellars, pollards, and saplings, chalk, gravel, sand, and stone standing, lying, and being upon or under the said lands, with liberty of ingress, egress, and regress for the landlord, and his agents, servants, and workmen, at all reasonable times, to mark, fell, dig, take and carry away the same, paying reasonable compensation for all damage (if any) done thereby.

2. ALL game, wild fowl, and fish in or upon the said lands, with liberty for the landlord and his friends, companions, game-keepers, and servants, at all reasonable times of the year, to hunt, shoot, fish, and sport over the said lands.

## PART III.—DURATION OF TENANCY.

A term of one year certain, commencing on the 5th day of April, 18—, and continuing from year to year until the tenancy shall be determined by either party by a six months' notice to quit, expiring at the end of a year of tenancy.

Fourth part.  
—Rents.

1. Yearly  
Rent of £—.

## PART IV.—THE RENTS RESERVED BY THIS DEMISE.

1. THE yearly rent of £—, to be paid by equal half-yearly payments, without any deduction (except for land tax and the landlord's property tax), on the — day of —, and the — day of —, in every year, the first payment thereof to be made on the — day of — next.

2. THE further yearly rent of £50 for every acre, and so in proportion for any less quantity than an acre, of meadow or grass land (parcel of the said farm) which the tenant shall, at any time plough and break up or convert into tillage or garden ground without the landlord's consent, the first payment to be made on such of the said half-yearly days as shall first happen after such ploughing, breaking up, or converting into tillage as aforesaid, and to continue payable during the remainder of the tenancy.

## PART V.—TENANT'S COVENANTS.

Rent to be  
paid half-  
yearly.

1. THE TENANT shall pay the said yearly rent of £—, and also the additional rent above reserved if the same shall become payable at the times hereby appointed for payment thereof, and shall also pay the tithe rent-charge, and all rates, taxes, and

assessments (except the land tax and the landlord's property tax).

OF A FARM  
FROM YEAR  
TO YEAR.

2. THE TENANT shall keep in good and tenantable repair, the interior of the houses and other buildings, and the glass in the windows thereof, and in such repair leave the same at the end of the tenancy. He shall also at the proper season well and sufficiently lay, cut, repair, and keep repaired, all hedges, mounds, rails, gates, and fences, and stoned and other roads, and open, scour, cleanse and throw all ditches, water-courses, and drains, and so leave the same at the end of the tenancy.

Repairs to  
be done by  
tenant.

3. THE TENANT shall pay an additional rent at the rate of £5 per cent. per annum on all money expended by the landlord in draining or other improvements with the consent of the tenant, and shall also haul, without charge, all materials for repairs or improvements done by the landlord, provided that such materials be not brought from a distance exceeding — miles from the said farm.

Tenant to  
pay 5 per  
cent. on im-  
provements.

4. THE TENANT shall preserve all game, shall allow no person to sport without the landlord's permission, and shall sign all notices not to trespass required by the landlord or his agent; PROVIDED nevertheless that the tenant may kill or keep down the rabbits on the said farm, but no dog shall be used by him for that purpose between the months of April and September.

Tenant to  
preserve  
game.

5. THE TENANT shall prevent to the utmost of his power any new footpaths from being made.

To prevent  
new foot-  
paths from  
being made.

6. THE TENANT shall not assign, underlet, or part with, the possession of any part of the premises without the consent in writing of the landlord or his agent.

Not to  
assign or  
underlet  
without  
consent.

7. THE TENANT shall not cause or permit any timber or other trees to be lopped or topped, or any such tree or any pollard to be felled, cut down, injured, or destroyed, without the written consent of the landlord or his agent, but shall to the utmost of his power preserve the same, and also all fruit-trees, from any spoil or damage, either by cattle or otherwise. The tenant shall also at his own expense plant, fence, and protect all fruit-trees supplied by the landlord.

Not to suffer  
trees to be  
lopped with-  
out consent.

8. THE TENANT shall not, under any circumstances, mow any of the meadow or pasture lands for hay more than once in the year, nor later than usual and customary in the neighbour-  
hood.

Not to mow  
more than  
once a year.

OF A FARM  
FROM YEAR  
TO YEAR.

Not to break  
up meadow  
or pasture  
land.

To consume  
hay and  
straw, &c.,  
upon pre-  
mises.

Not to take  
two white  
crops in suc-  
cession, and  
to cultivate  
properly.

In last year  
of tenancy to  
sow part of  
arable with  
wheat and  
sow grass  
seeds with  
Lent crops.

Incoming  
tenant may  
in last year  
enter on  
parts of  
arable to  
prepare for  
crops.

Tenant to  
quit posses-  
sion at end  
of tenancy.

To leave  
hay, &c., for  
incoming  
tenant.

9. THE TENANT shall not at any time pare off the turf, or destroy or burn the herbage of any meadow or pasture ground, or break up the same or convert it into tillage or garden ground, without the written consent of the landlord or his agent.

10. THE TENANT shall spend and consume upon the premises the hay, straw, grass, green crops, or fodder which shall grow upon or be produced therefrom, except that he may remove hay or straw, provided that for every ton of hay or straw removed three tons of good rotten dung, or other manure equivalent thereto, shall be brought and consumed on the said premises, and the tenant shall also duly and regularly lay out and spread upon the land all the dung, compost, and manure from time to time made or brought upon the premises, or from the produce arising therefrom, and at the determination of the tenancy shall leave, for the benefit of the landlord or incoming tenant, without any compensation, any such dung, compost, or manure which shall remain unsread.

11. THE TENANT shall not take two white straw crops in succession, and, in general, shall stock, manage, till, cultivate, and farm the premises in a good, clean, and husbandlike manner, according to the best and most approved mode of husbandry in the neighbourhood, and shall keep and leave the same in good heart and condition.

12. THE TENANT shall, in the last year of the tenancy, prepare in good condition and sow in good season with wheat, such proportion (not exceeding one-third part) of the arable land as shall then be in due course for the same, and shall sow good grass seeds with the last year's Lent crops.

13. THE LANDLORD or the then incoming tenant shall be at liberty on or at any time after the first day of January preceding the end of the tenancy, to enter upon the arable land, except such parts thereof as shall be in course for wheat, or in clover or root crops, for the purpose of preparing the same for the next year's crop.

14. THE TENANT shall give up possession of the whole of the premises on the day of the expiration of the tenancy, any custom of the country to the contrary notwithstanding.

15. THE TENANT shall at the end of the tenancy leave all the hay, straw, and roots left unconsumed by him for the landlord or incoming tenant, being paid for the same as hereinafter provided.

PART VI.—THE LANDLORD'S COVENANTS.

OF A FARM  
FROM YEAR  
TO YEAR.

1. THE LANDLORD shall keep in good and tenantable repair, the main walls, main timbers, floors, and roofs of the houses and other buildings, upon receiving notice from the tenant that any such repairs are wanted (*f*).

2. THE LANDLORD shall find the materials for, and shall make and put up, such new gates as may be required upon the farm, but the tenant shall pay to him the cost of making and putting up the same. The landlord shall also find sawn timber in the rough for all repairs of fences and other external repairs to be done by the tenant.

Landlord to  
make new  
gates, &c.

3. THE LANDLORD shall keep the farmhouse and farm buildings insured against loss or damage by fire in a sum sufficient to cover the value thereof, and the money received under such insurance shall be forthwith laid out in rebuilding and reinstating the premises in respect of which the same shall be received.

To insure.

PART VII.—GENERAL PROVISIONS.

1. IF a half-year's rent shall be in arrear for forty days, the landlord may forthwith re-enter and eject the tenant, whether the arrears shall have been legally demanded or not.

Landlord  
may eject  
tenant if  
rent in  
arrear.

2. THE LANDLORD or the incoming tenant shall pay or allow to the tenant at the end of the tenancy, according to valuation for the following matters and things:—

Tenant to  
be allowed  
at end of  
term  
for certain  
things  
according to  
a valuation.

- (a) For the wheat sown as before provided;
- (b) For the grass seeds sown with the last year's Lent crops, and the cost of harrowing the same;
- (c) For the winter feed of the arable lands given up to the incoming tenant as before provided;
- (d) For the unconsumed hay, straw, and roots, at a spending price;
- (e) For the proportional value of such of the tillages and manurings done within the last two years of the tenancy as shall remain unexpended, and for the benefit of the incoming tenant;

and the tenant shall not be entitled by the custom of the country or otherwise to any payments except those above mentioned:

3. AT the end of the tenancy an account shall be taken between landlord and tenant as follows: 1st, a valuation shall

Account and  
valuation at  
end of term.

(*f*) See *Makin v. Watkinson*, L. R. 6 Ex. 25.



OF A FARM  
FROM YEAR  
TO-YEAR.

be made of the several matters and things which are hereinbefore agreed to be paid or allowed for by the landlord or his incoming tenant, and the amount of such valuation shall be debited to the landlord; and 2ndly, the valuers shall determine whether any and (if so) what sum of money ought to be paid or allowed by the tenant to the landlord for any breach by the tenant of the terms and conditions of the tenancy, or in respect of the condition in which he has left the farm, and the same together with any arrear of rent or of rates and taxes which may be owing from the tenant shall be debited to the tenant: And the balance which upon such account shall appear due from one party to the other shall be forthwith paid with interest thereon after the rate of £4 per cent. per annum, computed from the end of the tenancy.

Mode of  
valuation.

4. EVERY valuation under this agreement shall be made by two indifferent persons, one to be named by each party interested, and in case of their disagreement, then by an umpire, to be chosen by the valuers previously to entering upon the consideration of the matters referred to them, and in case either of the parties shall neglect to name a valuer for the space of seven days next after a notice in writing so to do shall have been given to him by the other party, or shall name a valuer who shall refuse to act, then the valuation may be made by the valuer named by the other party alone. The valuers or their umpire shall have power to decide any questions which may arise in the course of their valuation, and in particular any questions as to what matters or things are proper subjects of valuation or allowance according to the true intent and meaning of this agreement. Every reference to valuers under this agreement shall be deemed a reference to arbitration within the provisions of the Common Law Procedure Act, 1854, and shall have all the incidents and consequences of an arbitration under that Act.

Agricultural  
Holdings  
Act not to  
apply.

5. NO PART of the Agricultural Holdings (England) Act, 1875, shall apply to this contract of tenancy.

#### PART VIII.—SUPPLEMENTAL AGREEMENT.

Recital of  
agreement  
with out-  
going tenant  
under which  
he is entitled  
to allow-  
ances for  
certain

WHEREAS the said farm is at present in the occupation of X. Y. (hereinafter called the outgoing tenant), under an agreement dated the — day of —, 18—, and he has received notice to quit, which will expire on the — day of — next, and by the said agreement it is provided (in clause No. —, of

part —, of the schedule thereto) that the landlord or his incoming tenant shall at the end of the said tenancy pay or allow to the outgoing tenant, according to valuation, for the following matters and things, namely—(*specifying them*): And it is also provided (in clause No. —), that at the end of the tenancy an account shall be taken between the landlord and outgoing tenant as follows: 1st, that a valuation shall be made of the several matters and things which are thereinbefore agreed to be paid or allowed for by the landlord or his incoming tenant, and the amount of such valuation shall be debited to the landlord; and 2ndly, that the valuers shall determine whether any and (if so) what sum of money ought to be paid or allowed by the outgoing tenant to the landlord for any breach by the tenant of the terms and conditions of the tenancy, or in respect of the condition in which he has left the farm, and the same together with any arrear of rent or of rates and taxes owing from the tenant shall be debited to the outgoing tenant, and that the balance which upon such account shall appear due from one party to the other shall be forthwith paid with interest thereon after the rate of £4 per cent. per annum, computed from the end of the tenancy (g): NOW IT IS HEREBY AGREED between the landlord and tenant under this agreement (hereinafter called “the incoming tenant”), that whatever sum of money shall under the said recited agreement become payable to or from the outgoing tenant shall be paid or received (as the case may be) by the incoming tenant, and the valuations to be made under the said agreement shall be binding on the incoming tenant: AND IT IS ALSO AGREED that if any sum of money shall by the valuation to be made as aforesaid be awarded to be paid or allowed by the outgoing tenant to the landlord or the incoming tenant for any breach by the outgoing tenant of the terms and conditions of the tenancy or for the state of the farm, and which sum of money shall accordingly be brought into the account, and paid or allowed for as aforesaid, the incoming tenant shall lay out an equal sum on the farm forthwith, or so soon as the same can profitably be laid out thereon: AND whatever sum of money (if any) shall be found owing by the outgoing tenant for arrears of rent or of rates and taxes as aforesaid, and which shall

OF A FARM  
FROM YEAR  
TO YEAR.

things  
according to  
a valuation.

Agreement  
that in-  
coming  
tenant shall  
account  
with out-  
going tenant  
on the terms  
of the above  
recited  
agreement,

and that  
any money  
allowed to  
incoming  
tenant for  
the state of  
the farm  
shall be laid  
out by him  
on the farm.

(g) The recital must of course be made to agree with the actual terms of the agreement. It is above assumed that the clauses are the same as those in the new agreement.

OF A FARM  
FROM YEAR  
TO YEAR.

accordingly be brought into the account and allowed for as aforesaid, shall be forthwith applied by the incoming tenant in the payment of such arrears.

AS WITNESS the hands of the parties.

THE SCHEDULE ABOVE REFERRED TO.

### No. IX.

LEASE of a FARM from YEAR to YEAR.—(*A Michaelmas taking.*)

MEMORANDUM OF AGREEMENT, made the — day of —, BETWEEN A. B., of, &c. (hereinafter called “the landlord”), of the one part, and C. D., of, &c. (hereinafter called “the tenant”), of the other part.

Agreement  
by landlord  
and tenant  
to let and  
take.

THE LANDLORD agrees to let, and the TENANT agrees to take, the farm and lands situate in the parish of —, in the county of —, described in the first part of the schedule hereto, upon and subject to the terms and conditions set forth in the other parts of the schedule.

THE SCHEDULE ABOVE REFERRED TO.

(*The 1st and 2nd parts will be the same as in last Precedent.*)

### PART III.—DURATION OF TENANCY.

Tenancy to  
be from year  
to year.

A TERM of one year, commencing on the 29th day of September, 18—, and so on from year to year until the tenancy shall be determined by either party by a six months’ notice to quit, expiring at the end of a year of tenancy.

### PART IV.—RENTS.

(*As in last Precedent.*)

### PART V.—TENANT’S COVENANTS.

1 to 11. (*As in last Precedent.*)

To stack in  
barns, &c.,  
produce of  
last year.

12. THE TENANT shall stack in the barns and rickyards in the last year of the tenancy all the corn, grain and hay which shall be the produce of the said premises (the corn and grain to be

there thrashed out, and all the hay, straw, chaff, stubble, and fodder to be there consumed with cattle, in a husbandlike manner, and the dung, manure, compost, or soil therein arising to be left on the premises), for which purposes the tenant shall have the use of such of the barns and yards as may be necessary until the 1st day of May next following.

OF A FARM  
FROM YEAR  
TO YEAR.

13. IN the last year of the tenancy the landlord or his incoming tenant may enter upon the lands to be left for a wheat season, so soon as the crop for such year can be cleared off, in order to prepare the same for such season, and may also sow seeds among the Lent or summer corn, which the tenant shall harrow in.

Incoming  
tenant may  
enter in last  
year of  
tenancy on  
parts of  
farm.

#### PART VI.—LANDLORD'S COVENANTS.

1, 2, 3. (*As in last Precedent.*)

4. THE LANDLORD or his incoming tenant shall take to the turnips and fallows at the end of the tenancy, and shall pay the tenant for labour and seed properly performed or expended upon such turnips and fallows.

Incoming  
tenant to  
take to  
turnips and  
fallows.

5. THE TENANT shall at the end of the tenancy leave all the hay, straw, and roots left unconsumed by him for the landlord or incoming tenant, being paid for the same as hereinafter provided.

To leave  
hay, &c.

#### PART VII.—GENERAL PROVISIONS.

1. (*As in last Precedent.*)

2. THE LANDLORD or the incoming tenant shall pay to the tenant at the end of the tenancy, according to a valuation, for the matters and things following (that is to say):

Outgoing  
tenant to be  
paid for  
certain  
matters and  
things at a  
valuation.

For the labour and seed properly performed and expended upon the turnips and fallows to be taken to by the landlord or incoming tenant as before provided ;

For the proportionate value of such of the tillages and manurings done within the last two years of the tenancy as shall remain unexpended, and for the benefit of the incoming tenant ;

For the unconsumed hay, straw, and roots, at a spending price.

3, 4, 5. (*As in last Precedent.*)

#### PART VIII.—SUPPLEMENTAL AGREEMENT.

(*As in last Precedent.*)

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THE SCHEDULE ABOVE REFERRED TO.

## No. X.

OF A FARM  
FROM YEAR  
TO YEAR.

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LEASE of a FARM from YEAR to YEAR, where the AGRICULTURAL HOLDINGS ACT, 1875, is allowed to apply, except as to a year's NOTICE to quit (h).

MEMORANDUM OF AGREEMENT, made the — day of —, BETWEEN A. B., of, &c. (hereinafter called "the landlord"), of the one part, and C. D., of, &c. (hereinafter called "the tenant"), of the other part.

THE LANDLORD agrees to let, and the TENANT agrees to take, &c.

(The same as Precedent No. VIII. or No. IX., according as the tenancy is a Lady-day or Michaelmas one, down to the end of the 6th part of the Schedule.)

## PART VII.—GENERAL PROVISIONS.

1. (Landlord may eject for arrear of rent as in Precedent No. VIII.)

Agricultural  
Holdings  
Act to apply,  
except  
sect. 51.

2. Section 51 [and section 18] (i) of the Agricultural Holdings (England) Act, 1875, shall not apply to the holding under this demise. The other provisions of the said Act shall apply to the holding under this demise so far as the same are applicable thereto, and subject to the express provisions herein contained.

Tenant to  
be also  
entitled to  
allowances  
for certain  
matters.

3. Besides any claim for compensation which the tenant may be entitled to make under the said Act, he shall be entitled at the end of the tenancy to an allowance from the landlord or the incoming tenant, for the following matters and things, namely :—

Extension of  
notice to  
quit to one  
year, not  
desirable.

(h) This precedent is retained, although, as a general rule, it seems better to exclude the Act. Even if the other parts of the Act are allowed to apply, it seems undesirable to adopt clause 51 extending the usual half-year's notice to quit to one year. A bad tenant may, during the year after the notice, do much injury to the farm, while a good tenant, receiving a half year's notice only, is sufficiently compensated by the valuations allowed him.

(i) Section 18 provides for the tenant receiving compensation for breaches of the agreement on the landlord's part. It is suggested for the consideration of the landlord's agent whether this clause should be allowed to apply, it being difficult to see what cases of breach by the landlord can properly entitle the tenant to damages at the end of the term, and while at the same time the clause is not unlikely to give rise to vexatious claims by the tenant.

*(If the taking is a Lady-day taking.)*

OF A FARM  
FROM YEAR  
TO YEAR.

- (a) For the wheat sown as before provided ;
- (b) For the grass seeds sown with the last year's spring crops and the cost of harrowing the same ;
- (c) For the winter feed of the arable lands given up to the incoming tenant as before provided ;
- (d) For the proportional value of the tillages remaining for the benefit of the incoming tenant ;
- (e) For the unconsumed hay, straw, and roots at a spending price.

*(If the taking is a Michaelmas one.)*

- (a) For the labour and seed properly performed and expended upon the turnips and fallows, to be taken to by the landlord or incoming tenant, as before provided ;
- (b) For the proportional value of the tillages remaining for the benefit of the incoming tenant ;
- (c) For the unconsumed hay, straw, and roots at a spending price.

PROVIDED that the tenant shall, one month at least before the end of the tenancy, give notice in writing to the landlord of his intention to claim compensation for the matters and things aforesaid. But he must give a month's notice of claim.

4. BY way of deduction from the amount payable to the tenant under the last preceding article, as well as from any compensation payable to him under the said Act, the landlord shall be entitled to receive from the tenant proper compensation for any waste committed or permitted by the tenant, or for any breach by the tenant of this agreement, and generally, for or by reason of the condition of the farm not being such as, in the opinion of the referees, it ought to have been left in. Compensation to be allowed to landlord by way of deduction.

5. THE clauses of the said Act relating to procedure shall apply to any claim for allowances or compensation under these presents, as well as to any claim under the said Act. Procedure clauses of Act extended to claims under the contract.

## PART VIII.—SUPPLEMENTAL AGREEMENT.

WHEREAS the said farm is now in the occupation of X. Y. (hereinafter called "the outgoing tenant"), under an agreement dated the —— day of ——, 18—, and he has received a notice Recital of agreement with outgoing tenant as to allowance at the

OF A FARM  
FROM YEAR  
TO YEAR.

end of the  
tenancy.  
Recital that  
Agricultural  
Holdings  
Act applies  
to the  
tenancy.  
That claims  
may be  
made to  
compensa-  
tion for 1st  
or 2nd class  
improve-  
ments.

Agreement  
that incom-  
ing tenant  
shall pay to  
outgoing  
tenant any  
allowances  
or compen-  
• sation he  
may be  
entitled to,

and that  
any sum  
awarded  
by way of  
deduction  
for breaches  
of agree-  
ment, &c.,  
shall be laid  
out by in-  
coming  
tenant on  
the farm.

to quit, which will expire on the — day of — next; and by the said agreement it is provided, &c. (*set out provisions (if any) entitling outgoing tenant to allowances*). AND WHEREAS the Agricultural Holdings (England) Act, 1875, applies to the holding under the said recited agreement: AND WHEREAS the outgoing tenant has not executed any improvements of the 1st class mentioned in the said Act, with the consent of the landlord, so as to be entitled to claim compensation on account thereof, but he may have some claim to compensation for improvements of the 2nd or 3rd class: NOW IT IS HEREBY AGREED between the landlord and the tenant under this agreement (hereinafter called "the incoming tenant") that the incoming tenant shall pay to the outgoing tenant the sum of money which the outgoing tenant shall be entitled to receive, either by way of allowance for the matters and things aforesaid, under the said recited provision in that behalf contained in the said agreement of the — day of —, as aforesaid, or by way of compensation for improvements of the 2nd or 3rd class under the said Act, after making such deduction as under the said agreement or the said Act ought to be made therefrom; AND FURTHER, that if any sum of money shall be awarded to be paid or allowed by the outgoing tenant by way of deduction as aforesaid, under the said agreement or the said Act, for waste or breaches of agreement by him or in respect of the state in which the farm shall be left, the incoming tenant shall, as soon as possible, expend an equal sum of money on the farm for the benefit thereof; and if any sum of money shall be allowed by way of deduction under the said agreement or the said Act, for arrears of rent or of rates or taxes, the same shall be forthwith applied in payment of such arrears.

IN WITNESS, &c.

No. XI.

LEASE of a FARM for twenty-one years, excluding the AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1875.—  
(A Michaelmas taking.)

THIS INDENTURE, made the — day of —, 18—, BETWEEN A. B., of, &c. (*the lessor*), of the one part, and C. D., of, &c. (*the lessee*), of the other part, WITNESSETH, that in consideration of the rents hereinafter reserved, and the covenants on the lessee's part hereinafter contained, the said A. B. doth hereby demise unto the said C. D., his executors, administrators, and assigns, the farm and lands described in the first part of the schedule hereunder written, with all ways, rights, and appurtenances thereto belonging, EXCEPT AND RESERVED as in the second part of the said schedule is mentioned, To HOLD the said premises unto the said C. D., his executors, administrators, and assigns, for the term mentioned in the third part of the said schedule, YIELDING AND PAYING the rents mentioned in the fourth part of the said schedule: AND the said C. D. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his heirs and assigns, as in the fifth part of the said schedule is expressed: AND the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors administrators, and assigns, as in the sixth part of the said schedule is expressed: AND IT IS ALSO AGREED AND DECLARED between and by the parties hereto as in the seventh part of the said schedule is expressed: AND IT IS DECLARED that the said schedule be deemed part of these presents, and be read and construed accordingly, and in the construction of the said schedule the expression "the landlord" shall mean and include the said A. B., his heirs and assigns, and the expression "the tenant" shall mean and include the said C. D., his executors, administrators, and assigns.

IN WITNESS, &c.

OF A FARM.

Parties.

Witnessing part.

Lessor demises farm described in first part of schedule, except as mentioned in 2nd part of schedule, to lessee for term mentioned in 3rd part.

At rents mentioned in 4th part of schedule.

Covenant by lessee as in 5th part, and by lessor as in 6th part of schedule.

and mutual agreements as in 7th part of schedule.

Declaration as to schedule and meaning of expressions therein.



OF A FARM.

### Schedule

THE SCHEDULE ABOVE REFERRED TO.

First part.

PART I.—THE FARM AND LANDS DEMISED BY THIS LEASE.

Description  
of farm.

ALL that farm and lands situate in the parish of —, in the county of —, known as “— Farm,” and consisting of the following particulars : namely—

No. on Parish Map.	Description.	State.	Quantity.

Second part.—Exceptions and reservations.

## PART II.—EXCEPTIONS AND RESERVATIONS.

1. Timber,  
&c.

1. ALL timber, and timber-like trees, tellars, pollards, and saplings, chalk, gravel, sand, and stone standing, lying, and being upon or under the said lands, with liberty of ingress, egress, and regress for the landlord and his agents, servants, and workmen, at all reasonable times, to mark, fell, dig, take and carry away the same, paying reasonable compensation for all damage (if any) done thereby.

2. Game, &c.

2. All game, wild fowl, and fish in or upon the said lands, with liberty for the landlord and his friends, companions, gamekeepers, and servants, at all reasonable times of the year, to hunt, shoot, fish, and sport over the said lands.

Third part.  
—Duration  
of lease.

### PART III.—DURATION OF LEASE.

A term of 21 years, commencing from the 29th day of September, 18—.

Fourth part.  
—Rents.

PART IV.—THE RENTS RESERVED BY THIS LEASE.

1. Yearly  
Rent of £--

1. THE yearly rent of £—, to be paid by equal half-yearly payments, without any deduction (except for land tax and the landlord's property tax), on the — day of — and the — day of — in every year, the first payment thereof to be made on the — day of — next.

2. THE further yearly rent of £50 for every acre, and so in

proportion for any less quantity than an acre, of meadow or grass land (parcel of the said farm) which the tenant shall, at any time or times during the said term, plough and break up or convert into tillage, without the consent in writing of the landlord or his agent first had and obtained, the first payment thereof to be made on such of the said half-yearly days of payment as shall first happen after such ploughing, breaking up, or converting into tillage as aforesaid, and to continue payable thenceforth during the residue of the term hereby granted.

PART V.—THE TENANT'S COVENANTS.

Fifth part.  
—Lessee's  
covenant's.  
1. To pay  
rent, rates,  
and taxes.

1. THE TENANT shall pay the said yearly rent of £—, and also the additional rent above reserved, if the same shall become payable at the times and in the manner above appointed for payment thereof, and shall also pay all the tithe rent-charge, rates, taxes, and assessments whatsoever which shall, during the tenancy, be payable in respect of the demised premises, except the land tax and landlord's property tax.

2. THE TENANT shall not assign or underlet the premises hereby demised, or any part thereof, without the consent in writing of the landlord, and shall, at all times during the said term, reside in the farmhouse.

2. Not to  
assign with-  
out license,  
and to reside  
in farm-  
house.

3. THE TENANT shall, from time to time during the said term, when and so often as need shall require, at his own cost, well and substantially repair, maintain, scour, cleanse, and keep the messuage and other buildings hereby demised, and the fixtures therein, and also all the walls, gates, stiles, hedges, mounds, banks, bridges, fences, culverts, drains, and ditches belonging to the said farm and premises in, by, and with all manner of needful and proper reparations and amendments whatsoever, and the same so well and substantially repaired, maintained, scoured, cleansed, and kept, shall, at the expiration of the term hereby granted, duly surrender to the landlord (*k*).

3. To repair.

4. THE TENANT shall paint, once in every five years of the said term, all the wood and ironwork of or belonging to the exterior of the farmhouse and other buildings hereby demised which have been usually painted, and once in every seven years of the said term, the interior parts of the said house and buildings with two coats in oil of the best quality.

4. To paint  
outside once  
every five  
years, and  
inside every  
seven years.

(*k*) If the landlord is to insure, the words "damage by accidental fire or tempest excepted" should be added here.

## OF A FARM.

5. THE TENANT shall at all times during the tenancy keep the farmhouse, and all buildings now or which shall hereafter be on the said farm, insured against loss or damage by fire, in the joint names of the landlord and tenant, in the ——— insurance office, or in some other insurance office approved of by the landlord, in a sum of money sufficient to cover the value of the said house and buildings, and will for that purpose pay all premiums and sums of money payable in respect of such insurance, and will from time to time, when required, produce to the landlord or his agent the policy of such insurance and the receipt for every such premium and sum of money, and all monies which shall be received under or by virtue of any such insurance shall be forthwith laid out and applied in the rebuilding or reinstating of the premises, in respect of which the same shall be paid, and if the same shall be insufficient for that purpose, the deficiency shall be paid by the tenant out of his own money (*l*).

6. To preserve timber, lay hedges, scour ditches, &c.

6. THE TENANT shall preserve from injury by cattle or otherwise all timber, and timber-like trees, tellars, pollards, spires, saplings, live hedges, and underwoods on the said premises, and shall not fell, cut, destroy, lop, top, or prune any of the said trees and tellars, pollards, spires, saplings, live hedges or underwoods, except pollards that have been usually lopped, under the penalty of £10 for every tree or tellar so cut or spoiled, as a liquidated fine in addition to the actual damage, and shall cut and lay the hedges and live fences properly and seasonably, and from time to time re-plant with quick-plants all the vacant places in the same hedges, and properly maintain and rear the same, and shall open and scour out in the most effectual manner, once in every year of the said term at the least, all the ditches on the said premises.

7. Not to mow more than once a year nor later than is customary, nor break up grass land.

7. THE TENANT shall not mow any of the meadow or pasture lands for hay more than once in the year, nor later than usual and customary in the neighbourhood, and shall not plough, break up, or convert into tillage, any meadow or grass land without the written consent of the landlord or his agent.

8. To consume all the hay, &c., upon the farm, or bring in manure in

8. THE TENANT shall spend and consume upon the premises all the hay, straw, grass, green crops, or fodder which shall grow upon or be produced therefrom, except that he may remove hay or straw, provided that for every ton of hay or straw removed

(*l*) This covenant will be omitted if the arrangement is that the landlord shall insure.

three tons of good rotten dung, or other manure equivalent thereto, shall be brought and consumed on the said premises. The tenant shall also duly and regularly lay out and spread upon the land all the dung, compost, and manure from time to time made or brought upon the premises, or from the produce arising therefrom, and at the determination of the tenancy shall leave for the benefit of the landlord or incoming tenant without any compensation, any such dung, compost, or manure which shall remain unspread. If any straw, hay, or manure on the said demised premises shall be destroyed or damaged by fire, the tenant shall apply and expend on the said premises such quantity of artificial manures as shall be equivalent thereto.

OF A FARM.  
lieu of hay,  
&c., re-  
moved.  
To spread  
manure on  
land and  
leave same  
at end of  
term.

9. THE TENANT shall not take from any part of the arable lands more than two crops of any kind of corn or grain in any four years, nor sow two white straw crops in succession, and in general shall cultivate or manage the said farm and lands in a good and husbandlike manner, and keep the same in good heart and condition.

9. Covenants  
as to crop-  
ping, and to  
cultivate  
well.

10. THE TENANT shall preserve all game, and shall allow no person to sport on the said premises without the lessor's permission, and shall assign all notices not to trespass required by the lessor or his agent: PROVIDED NEVERTHELESS, that the lessee may kill the rabbits on the said premises at any time by shooting, ferreting, digging, or otherwise, but no dog shall be used by him between the months of April and September.

10. To pre-  
serve same,  
and not to  
allow per-  
sons to sport  
without  
leave of  
lessor, but  
lessee may  
kill rabbits.

11. THE TENANT shall, to the utmost of his power, prevent any new footpaths from being made, or any waste from being enclosed on the frontage of any part of the said premises.

11. To pre-  
vent new  
footpaths  
from being  
made.

12. THE LANDLORD may, at any time during the said term, at seasonable times of the day, enter into and upon the said premises, and examine the state of repair, cultivation and condition thereof, and if he shall find that the same are defective, or out of repair, or not in a proper state of cultivation, or that the tenant's covenants are in any particular not properly observed, then and in such case he may give a notice in writing to the tenant to amend and make good the same, which the tenant shall accordingly do within a reasonable time, to be expressed in such notice.

12. To per-  
mit lessor  
to enter to  
view state  
of repairs  
on, and  
amend same  
on notice.

13. IF THE LANDLORD shall, at any time during the said term, by agreement with the lessee, expend any money in draining, building, or other permanent improvements on the said pre-

13. To pay  
5 per cent.  
on money  
expended in  
draining.

## OF A FARM.

building,  
and other  
improve-  
ments.

mises, the lessee shall, during the said term, pay to the lessor interest on the sum so expended after the rate of £5 per cent. per annum, such interest to be considered as additional rent, and to be recoverable as such by distress or otherwise.

14. To stack  
in barns,  
&c., produce  
of last year.

14. THE TENANT shall stack in the barns and rickyards in the last year of the tenancy all the corn, grain, and hay produced on the said farm (the corn and grain to be there thrashed out, and all the hay, straw, chaff, stubble, and fodder to be there consumed with cattle, in a husbandlike manner, and the dung, manure, compost, or soil therein arising to be left on the premises), for which purposes the tenant shall have the use of such of the barns and yards as may be necessary until the 1st day of May next following.

15. Incom-  
ing tenant.  
may enter  
in last year  
of tenancy  
on parts of  
farm.

15. IN the last year of the tenancy the landlord or his incoming tenant may enter upon the lands to be left for a wheat season, so soon as the crop for such year can be cleared off, in order to prepare the same for such season, and may also sow seeds among the Lent or summer corn, which the tenant shall harrow in.

16. To leave  
hay, &c.

16. THE TENANT shall, at the end of the tenancy, leave all the hay, straw, and roots unconsumed by him for the lessor or incoming tenant, being paid for the same as hereinafter provided.

Sixth part—  
Landlord's  
covenants.

## PART VI.—THE LANDLORD'S COVENANTS.

1. For quiet  
enjoyment  
by lessee.

1. THE TENANT, paying the rent or rents hereby reserved, and observing and performing all the covenants herein on his part contained, shall and may peaceably and quietly possess and enjoy the premises hereby demised, without any interruption by the landlord, or any person lawfully or equitably claiming from or under or in trust for him.

2. To find  
rough  
timber for  
lessee's re-  
pairs.

2. THE LANDLORD shall provide and allow to the tenant sufficient timber in the rough for all repairs which shall be required to be done by the tenant pursuant to his covenants herein contained, unless such repairs shall be rendered necessary by any wilful waste or neglect of the tenant, in which case the tenant shall provide such timber at his own expense.

3. Tenant to  
have use of  
barns until  
1st May  
after term.

3. THE TENANT shall have the use of such of the barns and rickyards as shall be required by him for the purposes mentioned in the lessee's covenant, No. 14, until the 1st day of May after the end of the tenancy.

4. THE LANDLORD or his incoming tenant shall take to the turnips and fallows at the end of the tenancy, and pay the tenant for labour and seeds properly performed and expended upon such turnips and fallows.

OF A FARM.  
4. Landlord or incoming tenant to take to turnips and fallows.

*(Add if the landlord insures.)*

[5. The landlord shall keep the farmhouse and farm buildings insured against fire in a sum sufficient to cover the value thereof, and all monies received under any such insurance shall be forthwith applied in rebuilding and reinstating the premises in respect of which the same shall be received, and if the said monies shall be insufficient for that purpose, the deficiency shall be paid by the landlord.]

5. Landlord to insure.

# PART VII.—GENERAL PROVISIONS.

Seventh part  
—General provisions.

1. IF any rent hereby reserved, or any part thereof, shall remain unpaid for the space of twenty-one days after the time hereby appointed for payment thereof, whether the same shall have been lawfully demanded or not, or if any breach shall be committed of any of the covenants herein on the tenant's part contained, or if the tenant shall become bankrupt, or compound or make any arrangement with his creditors, or permit any portion of the live or dead stock for the time being remaining on the said premises to be taken in execution by process of law, then and in any of the said cases the landlord may re-enter into and upon the premises hereby demised, or any part thereof in the name of the whole, and the same have again, re-possess, and enjoy as in his former estate.

1. Power of re-entry.

2. The landlord or his incoming tenant shall pay to the tenant at the end of the tenancy, according to a valuation, for the following matters and things, namely :

2. Tenant to be entitled to allowances for certain matters and things.

- (a) For the labour and seed properly performed and expended upon the turnips and fallows, to be taken to by the landlord or incoming tenant, as before provided ;
- (b) For the proportionate value of the tillages and manuring done by the tenant, and remaining for the benefit of the landlord or the incoming tenant ;
- (c) For the unconsumed hay, straw, and roots, at a spending price.

3. AT the end of the tenancy under this lease an account shall be taken between landlord and tenant as follows : 1st, a valuation shall be made of the several matters and things which

Account and valuation at end of term

OF A FARM

are hereinbefore agreed to be paid or allowed for by the landlord or his incoming tenant, and the amount of such valuation shall be debited to the landlord; and 2ndly, the valuers shall determine whether any and (if so) what sum of money ought to be paid or allowed by the tenant to the landlord for any breach by the tenant of the terms and conditions of the tenancy, or in respect of the condition in which he has left the farm, and the same, together with any arrear of rent or of rates and taxes which may be owing from the tenant, shall be debited to the tenant: And the balance which upon such account shall appear due from one party to the other shall be forthwith paid with interest thereon after the rate of £4 per cent. per annum, computed from the end of the tenancy.

Mode of  
valuation.

4. EVERY valuation under this lease shall be made by two indifferent persons, one to be named by each party interested, and in case of their disagreement, then by an umpire, to be chosen by the valuers previously to entering upon the consideration of the matters referred to them, and in case either of the parties shall neglect to name a valuer for the space of seven days next after a notice in writing so to do shall have been given to him by the other party, or shall name a valuer who shall refuse to act, then the valuation may be made by the valuer named by the other party alone. The valuers or their umpire shall have power to decide any questions which may arise in the course of their valuation, and in particular any questions as to what matters or things are proper subjects of valuation or allowance according to the true intent and meaning of this agreement. Every reference to valuers under this lease shall be deemed a reference to arbitration within the provisions of the Common Law Procedure Act, 1854, and shall have all the incidents and consequences of an arbitration under that Act.

Agricultural  
Holdings  
Act not to  
apply.

5. NO PART of the Agricultural Holdings (England) Act, 1875, shall apply to this lease.

IN WITNESS, &c.

No. XII.

LEASE of a FARM for twenty-one YEARS, excluding the AGRICULTURAL HOLDINGS ACT, 1875 (a Lady-day taking.) OF A FARM EXCLUDING ACT.

(The same as the last Precedent, down to the end of Part II. of the Schedule.)

PART III.—DURATION OF TENANCY.

A TERM of twenty-one years, commencing from the 25th day of March, 18—.

(Part IV. as in last Precedent ; also Part V., down to end of Article 13.)

14. THE TENANT shall, at the end of the tenancy, leave all hay, straw, and roots unconsumed by him for the landlord or incoming tenant, being paid for the same as hereinafter provided. 14. To leave hay, &c.

15. THE TENANT shall, in the last year of the tenancy, prepare in good condition and sow in good season with wheat, such proportion (not exceeding one-third part) of the arable land as shall then be in due course for the same, and shall sow good grass seeds with the last year's Lent crops. 15. In year of tenancy to sow part of arable with wheat, and sow grass seeds with Lent crops.

16. THE LANDLORD or the incoming tenant shall be at liberty on or at any time after the 1st January preceding the end of the tenancy, to enter upon the arable land, except such parts thereof as shall be in course for wheat, or in clover or root crops, for the purpose of preparing the same for the next year's crop. 16. Landlord or incoming tenant may in last year enter on parts of arable to prepare for crops.

PART VI.—LANDLORD'S COVENANTS.

1, 2. (Same as in last Precedent, omitting Nos. 3 & 4.)

PART VII.—GENERAL PROVISIONS.

1. (As in last Precedent.)

2. The tenant shall be entitled at the end of the tenancy to an allowance from the landlord or incoming tenant for the following matters and things, namely :— Allowances to be made to tenant at end of tenancy, for certain things, besides compensation under Act.

(a) For the wheat sown as before provided ;

(b) For the grass seeds sown with the last year's Lent crops, and the cost of harrowing the same ;



OF A FARM  
EXCLUDING  
ACT.

- (c) For the winter feed of the arable lands given up to the landlord or incoming tenant ;
- (d) For the proportional value of tillages done by the tenant and remaining for the benefit of the landlord or incoming tenant ;
- (e) For the unconsumed hay, straw, and roots, at a spending price.
- 3, 4, 5. (*As in last Precedent, supra, p. 79, 80.*)
- IN WITNESS, &c.

## No. XIII.

OF COAL  
MINES IN  
LANCASHIRE.

LEASE of COAL MINES in LANCASHIRE by TENANT for  
LIFE under a Power.

Parties.

Witnessing  
part.

Lessor in  
exercise of  
power  
appoints  
and demises  
mines  
described in  
1st part of  
schedule,  
with rights  
and privi-  
leges, and

subject to  
restrictions  
and with  
exceptions  
mentioned  
in 2nd, 3rd  
and 4th  
parts of  
schedule

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*the lessor*), of the one part, C. D., of, &c., and E. F., of, &c. (*the lessees*), of the other part, WITNESSETH, that in consideration of the rents reserved by this lease, and of the covenants and conditions contained in this lease, and on the part of the lessees to be observed and performed, the said A. B. in exercise of the power for this purpose given to him by an indenture dated, &c., and made, &c., and of all other powers (if any) enabling him in this behalf, doth hereby appoint and demise unto the said C. D. and E. F., their executors, administrators, and assigns, THE MINES, beds, veins, and seams of coal and cannel mentioned and described in the first part of the schedule hereunder written, together with the liberties, powers, and privileges to be exercised in connection with the said mines and premises which are mentioned and specified in the second part of the said schedule, SUBJECT to the restrictions and conditions as to the exercise and enjoyment of the same liberties, powers, and privileges which are specified in the third part of the said schedule (EXCEPT AND RESERVED out of this demise unto the said A. B. and other the person or persons for the time being entitled to the mines and premises hereby demised in reversion expectant on this lease, the liberties, powers, and privileges mentioned and specified in the fourth part of the said schedule), To HOLD the mines and premises hereby demised or expressed

to be unto the said C. D. and E. F., their executors, administrators, and assigns, from the — day of — for the term of forty years thence next ensuing, YIELDING AND PAYING to the said A. B. or other the person or persons for the time being entitled as aforesaid, the several rents and sums of money mentioned and specified in the fifth part of the said schedule, SUBJECT to the provisions relating to the said rents expressed in the sixth part of the said schedule: AND the said C. D. and E. F. do hereby for themselves, their heirs, executors, administrators, and assigns, jointly and severally COVENANT with the said A. B. and other the person and persons for the time being entitled to the premises hereby demised in reversion expectant on this lease as in the seventh part of the said schedule is expressed: AND the said A. B. as to his own acts and deeds, and so as to bind so far as he can or may, his successors in title, but without being answerable for the acts and defaults of such successors, doth hereby for himself, his heirs, executors, and administrators, COVENANT with the said C. D. and E. F., their executors, administrators, and assigns, as in the eighth part of the said schedule is expressed: AND IT IS HEREBY MUTUALLY AGREED AND DECLARED between and by the parties hereto as in the ninth part of the said schedule is expressed: AND IT IS DECLARED that the schedule hereunder written shall be deemed part of these presents and be read and construed accordingly, and in the construction of the said schedule the expression "the lessor" shall mean and include the said A. B. and other the person or persons for the time being entitled to the premises hereby demised in reversion expectant on this lease, and the expression "the lessees" shall mean and include the said C. D. and E. F., their executors, administrators, and assigns, except where the context may require a different construction.

OF COAL MINES IN LANCASHIRE.

To lessee for term of forty years, at rents mentioned in 5th part of schedule and subject to provisions in 6th part of schedule.

Lessees' covenant as in 7th part,

and lessor as in 8th part of schedule.

Mutual agreement as in 9th part of schedule.

Declaration as to schedule and meaning of expressions therein.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Schedule.

PART I.—THE MINES DEMISED BY THIS LEASE.

First part—Description of mines.

1. THE MINES, beds, veins, and seams of coal and cannel, from the surface down to and including the mine, bed, vein or seam, called the — Mine, as well opened as unopened, lying and being within and under the lands situate in the township of

1. Mines under lands belonging to lessor.

OF COAL  
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— in the county of — containing together — acres or thereabouts, Cheshire measure, delineated and coloured — on the plan annexed to these presents, all which lands (as well the surface thereof as the mines thereunder) are comprised in or subject to the uses of the said indenture of settlement.

2. Mines  
under lands  
not belong-  
ing to  
lessor

2. THE MINES, beds, veins, and seams of coal or cannel from the surface down to and including the mine, called —, as well opened as unopened, lying within the lands situate in the said township of —, containing — or thereabouts, Cheshire measure, delineated and coloured — on the said plan, which lands as to the surface thereof belong to —, Esq., but the above-mentioned mines thereunder are comprised in and subject to the uses of the said indenture of settlement.

Second part.  
— Liberties  
and powers.

PART II.—LIBERTIES, POWERS, AND PRIVILEGES TO BE EXERCISED AND ENJOYED IN CONNECTION WITH THE ABOVE-MENTIONED MINES, BUT SUBJECT TO THE RESTRICTIONS AND CONDITIONS IN PART III.

1. To occupy  
parts of  
surface for  
purposes of  
works.

1. LIBERTY AND POWER for the lessees and their miners, agents, servants, and workmen at any time or times during the continuance of this demise to enter into and upon, and occupy such of the above-mentioned lands as may be necessary or convenient for carrying on the works of the mines hereby demised.

2. To work  
mines, use  
existing and  
make new  
shafts and  
other works.

2. LIBERTY AND POWER for the lessees, by all necessary or convenient ways and means, to work, get, raise and land the mines and premises hereby demised, and the produce thereof, and for those purposes to use any existing pits, shafts, watercourses, soughs, levels, drains, air-gates and tunnels, and to open sink, dig, drive, work, and make any new or other pits, shafts, watercourses, soughs, levels, drains, air-gates and tunnels in and upon, under or through, the said lands, or any part thereof, and to make, erect, set up, and afterwards to take down and remove any machines, gins, fire, or other engines, whimseys, or other utensils, whether of present use or future invention and contrivance, and to use all such other means as shall be requisite or proper for working and winning the said mines to the best advantage, and to lay, place, and stack the coal, cannel, earth, rubbish, spoil, materials and things which, during the continuance of this demise, shall be raised and produced from and out of the said mines, or used in or about the working and

carrying on the same, upon a convenient part of the said lands to be entered upon and occupied in the manner above mentioned.

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LYNCASHIRE

3. LIBERTY AND POWER for the lessees to make use of, appropriate, and enjoy for the more advantageous working of any fire or other engines or machines to be erected or set up for the drawing of water or coal out of the said mines, or for any other purpose connected with the working thereof, all the water and springs and streams of water upon or within any of the said lands, and to make and construct any reservoirs or lodges for collecting and impounding such water, they the lessees nevertheless in the exercise of such last-mentioned privileges, not depriving any house, mill, or watering-place for cattle of a reasonable quantity of water as before accustomed, and not in any manner fouling, impregnating, or otherwise deteriorating the same springs and streams of water so as to render the same useless and unprofitable.

3. To appropriate water.

4. LIBERTY AND POWER for the lessees to take, lead, and carry away, dispose of, make into coke and convert to their own use and benefit all the coal, cannel, and slack which shall, during the continuance of this demise be gotten from or out of the said mines, beds, veins, and seams of coal and cannel hereby demised, and for those purposes to make and construct such and so many waggonways, railways, tramways, and other ways, canals, cuts, docks, wharves, and other conveniences in, through, or over the said lands as the lessees shall deem necessary or expedient.

4. To lead and carry away coal, &c.

5. LIBERTY AND POWER for the lessees to erect upon the said lands any smithies, kilns, furnaces, coke ovens, houses, cottages, hovels, huts, cabins, stables, sheds, and other erections which shall from time to time be necessary or convenient for the more advantageous working and occupation of the said mines, or for the accommodation or occupation of the colliers and workmen employed therein.

5. To erect smithies, &c.

6. LIBERTY AND POWER for the lessees to search for, get and dig gravel, sand, stone, flags, and slate within the said lands for the purpose of making, forming, opening, repairing, levelling or filling up the said waggonways, railways, or other ways, canals, cuts, docks, wharves and bridges, or of erecting and repairing any of the said houses, smithies, kilns, ovens, furnaces and other erections, upon the same lands or any part thereof, but not for sale, and also to dig for and get clay, and to make and burn the

6. To get gravel, stone, clay, &c., for purposes of works.

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same into bricks to be used in or about any of the works aforesaid, but not for sale.

Third part—  
Restrictions  
and condi-  
tions.

PART III.—RESTRICTIONS AND CONDITIONS AS TO THE EXERCISE OF THE ABOVE LIBERTIES, POWERS, AND PRIVILEGES.

1. No pit or shaft to be sunk in certain parts of the land, and where surface does not belong to lessor, surface operations to be carried on so far only as lessor can authorize same.

1. No pit or shaft shall be sunk, and no building or thing shall be erected or set up, and no other surface operation shall be carried on by virtue of the liberties, powers, and privileges above granted in or upon the demesne lands — house or any part thereof: AND with respect to those of the above-mentioned lands, the surface whereof does not belong to the lessor, the right of carrying on surface operations thereon is hereby granted so far only as the lessor has power to grant the same, and the lessee shall pay to the owners, tenants and occupiers of such lands full compensation and satisfaction for all damage or injury which may be done or occasioned in or about the carrying on of such surface operations (if any), and shall keep indemnified the lessor from and against all actions, suits, claims, and demands in relation thereto.

2. No house or building to be taken without lessor's consent.

2. No house or building, and no courtyard, fold, garden or orchard attached or belonging to any house or building shall be taken or occupied for any of the surface operations above authorized without the consent in writing of the lessor or his agent.

3. No land to be taken if wanted by lessor for other mines and other suitable land is available.

3. No lands shall be taken or occupied for any of the surface operations above authorized if the same shall be required for working any mines of the lessor not included in this lease, or for the purpose of any of the works connected with such mines, and any other land not so required shall be suitable and convenient and equally available for such surface operations.

4. Buildings, &c., to be erected only on sites appointed by lessor.

4. ALL smithies, kilns, furnaces, ovens, houses, cottages; hovels, huts, cabins, stables, sheds and other erections above authorized to be erected and made, and all gravel, sand, stone, flags, slates, and clay above authorized to be gotten, and all clay above authorized to be burnt into bricks, shall be respectively erected, made, gotten, and burnt into bricks on such part only of the said lands as the lessor or his agent shall, within the period of twenty days after he shall have received a notice in writing for that purpose from the lessees, set out and appoint, but if the lessor or his agent shall neglect or refuse, for the space of such

twenty days, to set out a suitable place whereon such buildings may be erected, or materials may be gotten or such clay burnt into bricks as aforesaid, then and in such case the lessees may erect such buildings or get such materials or burn clay into bricks in such parts of the lands as by the lessor or his agent and the lessees shall be mutually agreed, or in case of their being unable to agree, shall be determined by arbitration: AND in particular no coke ovens shall be erected or set up in such a position that any damage or inconvenience may thereby arise to existing buildings, and all coke ovens shall (as far as is reasonably practicable) consume their own smoke.

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Coke ovens  
to consume  
their own  
smoke.

5. BEFORE taking possession of any land for surface operations under the above granted liberties, powers, and privileges, the lessees shall give to the lessor or his agent one calendar month's previous notice in writing, and shall also give a similar notice to the tenants or occupiers of the land proposed to be taken, or leave such notice at their respective usual places of abode, and every such notice shall properly and correctly specify by name or other sufficient designation and by quantity the land proposed to be taken, and the lessees shall, immediately after taking possession of any land, and before commencing surface operations thereon, well and effectually fence off the same from the adjoining lands.

5. Notice to  
be given to  
tenants  
before enter-  
ing on lands.

#### PART IV.—EXCEPTIONS AND RESERVATIONS OUT OF THIS LEASE.

Fourth part  
-- Exceptions  
and reserva-  
tions.

1. LIBERTY AND POWER for the lessor, and any lessee or other person authorized by him in that behalf, to enter into and upon the above-mentioned lands or any of them, and to search for, dig, work, and get all or any of the mines and minerals and other substances under the said lands which are not included in this lease, and for the purposes aforesaid, to sink, make, erect, and use such pits, shafts, levels, drains, watercourses, reservoirs, tunnels, buildings, engines, machinery, canals, railways, waggon-ways, and other ways, works and conveniences upon, through, or under the said lands, and the mines hereby demised, and the workings of the lessees under these presents as shall be necessary or expedient: AND also for the purposes aforesaid to use any existing pits or shafts and other works in and upon the said lands not required by the lessees for the purpose of the mines hereby demised: And also to use in common with the

1. Liberty  
for lessor to  
work other  
mines and  
to use the  
works of the  
demised  
mines to  
some extent  
for that  
purpose.

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But in so doing not to interfere with exercise of lessee's privileges, and to contribute to expense of keeping in repair canals, railways, &c., used in common, and to compensate lessee for damage done in exercise of reserved privileges.

lessees any canals, railways, waggonways, and other ways now existing, or which may hereafter be made by the lessees under the authority of these presents, and to cross or intersect any such last-mentioned canals, railways, waggonways, or other ways, with or by any canals, railways, waggonways, or other ways to be made under the liberties and powers hereby excepted and reserved: PROVIDED ALWAYS that the said excepted and reserved liberties, powers, and privileges shall be exercised and enjoyed in such manner as not to hinder or interfere with the liberties, powers, and privileges hereby granted and demised: PROVIDED ALSO that if the lessor or any person authorized by him as aforesaid, shall use any canal, railway, waggonway or other way in common with the lessees under the said excepted and reserved liberty in that behalf, the lessor or other the person using the same as aforesaid shall pay and contribute a just and fair proportion of the expense of keeping the same in repair and working order, the amount of such proportion to be settled in case of dispute by arbitration: PROVIDED ALSO that fair and proper compensation shall be paid by the lessor or other the persons for the time being exercising the said excepted and reserved liberties, powers and privileges to the lessees for all loss, damage, or injury which they may sustain or be put into by reason or in consequence of the exercise thereof, the amount of such compensation to be settled in case of difference by arbitration.

Fifth part—  
Rents.

#### PART V.—RENTS RESERVED BY THIS LEASE.

1. Certain  
yearly rent.

1. THE certain yearly rent of £—— to be paid by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first half-yearly payment to be considered as having become due on the —— day of ——. For and in respect of which certain yearly rent of £——, the lessees may in every year of this demise work and get from or out of the said demised mines and premises such a quantity of coal and cannel as at the rates hereinafter mentioned would yield or pay for that year footage rents equal in amount to the said certain yearly rent of £——. But the said certain rent shall always be paid, whether such quantity shall in fact be gotten or not.

2. Footage  
rents.

2. THE following footage rents to be paid for and in respect of all coal and cannel gotten from or out of the said demised

mines and premises over and above the quantity which the lessees are hereinbefore authorized to work and get in respect of the said certain yearly rent of £—— (that is to say); The rent of £—— for every Cheshire acre of one foot in thickness, and so in proportion for a greater or less quantity than an acre, and for a greater or less thickness than one foot, of coal and cannel gotten from or out of the mines called the —— Mine and the —— Mine respectively, or either of them; the rent or sum of £—— for every Cheshire acre of one foot in thickness, and so in proportion as aforesaid, of coal and cannel gotten from or out of the mines called the —— Mine and the —— Mine respectively, or either of them; and the rent or sum of £—— for every Cheshire acre of one foot in thickness, and so in proportion as aforesaid, of coal and cannel gotten from or out of the other mines hereby demised or any of them. The said footage rents to be paid by half-yearly payments on the —— day of —— and the —— day of —— in each year for and in respect of the coal and cannel gotten during the then preceding half-year.

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3. THE further yearly rent of £—— for or in respect of every Cheshire acre of land belonging to the lessor, the surface whereof shall be occupied or used by the lessees for any of the purposes of this demise, and so in proportion for any less quantity than an acre, the said surface rent to be paid by equal half-yearly payments on the same days as the said certain rent of £—— is hereinbefore made payable, and the first half-yearly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall commence, and the last half-yearly payment thereof to be made on such of the said days as shall happen next after such occupation or use shall have ceased and the land shall have been restored and rendered fit for cultivation again, and in case any difference of opinion shall arise as to what ought to be considered the occupation or use of the surface of any land for the purpose aforesaid; or as to the day on which such occupation or use shall have commenced, or as to the amount of rent payable under the reservation aforesaid, the matter in difference shall be settled by arbitration: PROVIDED ALWAYS that no such rent shall be paid or demanded in respect of any spoil banks or roads or ways now in existence and not used by the lessees.

3. Surface  
rent.



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## PART VI.—PROVISIONS RELATING TO THE RENTS.

Sixth part—  
Provisions  
as to rents.

1. To be free  
from deduc-  
tion except  
property  
tax.

2. Abate-  
ment to be  
made for  
coal left  
to support  
buildings,  
&c.

3. Provision  
for making  
up under  
workings  
during the  
next ten  
years.

4. Meaning  
of expres-  
sion  
"Cheshire  
Acre."

Seventh  
part—  
Lessees'  
covenants.

1. To pay  
rents and  
rates and  
taxes.

1. ALL the aforesaid rents shall be paid free from any deduction for rates, taxes or other assessments, except property tax.

2. A DEDUCTION or abatement shall be made in making or taking the yearly calculation or admeasurement for the purpose of ascertaining the footage rents payable for the then preceding year for and on account of all coal left for the support of buildings under the covenant in that behalf hereafter contained, or for faulty, thin, or bad coal, or for protection against water, but no such deduction or abatement shall be made for or on account of any pillars, walls, or ranges which may be left in the said mines otherwise than for the support of buildings, or for faulty, thin, or bad coal, or for protection against water as aforesaid, but all such pillars, walls, or ranges otherwise than as aforesaid, shall be paid for in like manner as if the coal constituting the same had been actually gotten from or out of the said demised mines.

3. IF in any year of the said term the lessees shall not work and get from or out of the said demised mines and premises such a quantity of coal or cannel as at the rates above mentioned would produce or yield footage rents equal in amount to the said certain rent of £——, then, and as often as the same shall happen, the lessees may, during the next ten years of the said term, or any of them, but not afterwards, work and get from or out of the said demised mines and premises such quantity of coal and cannel as shall be required to make up such deficiency without paying any rent for the same other than the said certain rent.

4. The expression "Cheshire Acre," above used with reference to the reservation of footage rents means an acre reckoned after the accustomed Cheshire measure of eight yards to the perch or pole:

## PART VII.—THE LESSEES' COVENANTS.

1. THE LESSEES shall pay to the lessor the rents reserved by this lease at the time and in the manner above appointed in that behalf, and shall also pay and discharge all taxes, rates, assessments, and impositions whatsoever which shall from time to time be charged, assessed, or imposed upon the said demised premises or any part thereof, or upon the owner or occupiers

thereof by authority of parliament or otherwise, except the property or income tax, payable by the lessor.

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2. THE LESSEES shall observe and keep good and true levels, and get the coal and cannel hereby demised clearly and fairly before them, and shall keep open during the continuance of this demise, and leave open at the end or sooner determination thereof, proper waterways, and air-gates, and shall also make and leave substantial and sufficient walls, ranges, and pillars when and where the same shall be necessary or proper to be left for supporting the shafts, pits, and roofs of the water-levels and air-ways which shall from time to time be made in or about the said mines.

2. To keep  
true levels,  
&c.

3. THE LESSEES shall, during the continuance of this demise, work and get the said hereby demised mines to as great an extent as they possibly can, and in all respects in a skilful, orderly, and workmanlike manner, and as to each and every of the mines when opened without voluntary intermission, and upon the most approved principle, and as other works of a similar nature are usually or ought to be worked or carried on, without doing or committing any wilful and unnecessary damage, waste, spoil, or destruction to the said mines and premises; or any part thereof, and doing as little damage as may be to the lands under which the said mines shall be found.

3. To work  
without  
inter-  
mission,  
&c.

4. THE LESSEES shall not at any time sink any pit, shaft, or works, or cause any communications so that the water in the upper series of mines shall get into the lower series of mines, but the lessees shall constantly maintain the water in the upper mines or series of mines separate and distinct from the lower mines or series of mines.

4. To keep  
out water,  
from flow-  
ing from one  
set of mines  
into  
another.

5. THE LESSEES shall from time to time, and at all times during the continuance of this demise, effectually fence off and keep effectually fenced off from the adjoining lands with good and substantial rails and posts all the pits, shafts, and banking room, roads, railways, cuts, canals, reservoirs, clay pits, and other places and conveniences made or used for working and carrying on the mines hereby demised, and shall at all times during this demise maintain sufficient roads, gates, stiles, and fences for the convenient occupation of such lands, and for the passing and re-passing by the lessor and his tenants, agents, and servants, and others on foot, and with horses, carts, carriages, and cattle to and from the said lands, for all purposes whatsoever; And

5. To fence  
off pits, &c.

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when and so soon as the said pits, shafts, roads, railways, cuts, canals, reservoirs, clay pits and other places and conveniences, or any of them shall be discontinued or become useless, the lessees shall fill up or remove the same unless the lessor shall signify his wish that the same shall be kept open or continued, in which case the same shall be left open accordingly, with all the shafts, pits, air-gates, levels, tunnels, soughs, drains, sluices, and other works and conveniences belonging thereto, in proper and sufficient repair and good working condition.

6. To fill up  
holes, &c.

6. THE LESSEES shall upon or before the determination of this demise, fill up and level with the adjoining lands and re-soil all holes and other places from whence gravel, sand, stone, flags, slate, clay, or other materials shall have been dug or gotten, and effectually drain the same, and also carry away and remove all the slack and rubbish which shall arise or be occasioned by digging and sinking pits and shafts, and by working the said mines hereby demised, or by banking and laying the produce of such mines in the said lands, or by cutting, forming, and repairing any roads, railways, tramways, canals, cuts, reservoirs, and other works belonging or relating to the premises aforesaid, and remove the brows, cops, and banks made for any of the purposes aforesaid, and re-soil the sites of the said pits, shafts, roads, railways, tramways, cuts, canals, reservoirs, and other works which shall be so removed or filled up as aforesaid, and also the lands from whence the slack, stone, and rubbish in the said brows, cops, and banks shall have been carried away and removed, and level with the adjoining lands any part or parts of the surface of the said lands which shall have been disturbed through or by means of any of the liberties, powers, and privileges hereby granted.

7. To keep  
in repair  
mines and  
plant.

7. THE LESSEES shall at all times during the continuance of this demise, effectually uphold and maintain in good and sufficient repair the mines and premises hereby demised, and all the engines, machinery, whimseys, gins, and other implements, furnaces, kilns, ovens, houses, cottages, erections, and works now standing and being, or which shall, during the continuance of this demise, be erected, made, or set up upon any part of the said lands, and except that if any road or way shall be used by the lessees in common with any other person or persons, the lessees shall pay only a fair and just proportion of the expense of maintaining the same in proper repair.

8. THE LESSEES shall not, during the continuance of this demise, commit, or knowingly suffer any voluntary waste, spoil, or destruction in or about the said mines and premises (except such as by these presents is authorized to be done for the carrying on and working of the said mines), and shall not fell or cut down any timber or other trees whatsoever growing or being upon the aforesaid lands or any part thereof without the consent in writing of the lessor or his agent for that purpose first had and obtained: AND shall not in the course or for the purpose of removing and levelling any spoil banks, railways, tramways, or other works connected with or occasioned by the working of the said mines cover any land (the surface of which shall not have been previously broken up or covered with rubbish) with earth or spoil, except with the previous consent of and in the manner and to the extent prescribed by the lessor or his agent, and shall not make or keep open any water-level, or do or suffer anything whereby or by reason or means whereof any mines of the lessor not hereby demised shall be in anyways injured or deteriorated, or otherwise than by working and getting the coal and cannel hereby demised according to the liberties, powers, and privileges hereby granted.

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LANCASHIRE.

8. Not to  
suffer waste.

9. THE LESSEES shall not work the mines hereby demised within the distance of fifty yards from the — fault except in levels and narrow workings for the purpose of ascertaining its true direction, and shall not work the mines under and adjacent to any building now standing, or which may hereafter be erected on the said lands or any part thereof, without giving to the lessor or his agent one calendar month's previous notice in writing: AND the lessor or his agent may, at any time within one calendar month after the receipt of such notice, mark out what coal shall be left as a support for such building, and the lessees shall leave such coal accordingly: AND if the lessor or his agent shall omit to mark out or to cause to be marked out what coal shall be left as aforesaid for the space of one calendar month after the receipt of such notice, the lessees shall leave so much coal as shall be sufficient to support the said building and protect the same from all damage and injury whatsoever by reason of working the said mines: AND if the lessees shall neglect or omit to leave a sufficient support for such building, and any damage or injury shall be thereby occasioned to such building, then and in such case the lessees shall pay to the

9. Not to  
work within  
certain  
distance of  
fault, or  
near any  
buildings.

OF COAL  
MINES IN  
LANCASHIRE.

lessor, or other the person or persons entitled to or interested in such building, full and adequate compensation for the damage or injury to be done thereto as aforesaid, the amount thereof to be settled in case of dispute by arbitration (*m*).

10. To pay  
value of land  
perma-  
nently  
damaged.

10. IF any land shall be permanently damaged in the exercise of any of the liberties, powers and privileges hereby granted, the lessees shall pay to the lessor at the end or sooner determination of this lease the sum of £—— for every statute acre of land so permanently damaged, and so in proportion for any less quantity than an acre.

11. To  
account  
half-yearly  
with tenants  
for damage  
done, &c.

11. THE LESSEES shall on or before the —— day of —— in every year during the continuance of this demise, and before the end of six calendar months from and after the determination thereof, account with the tenants and occupiers of any part of the lands within or under which the said mines and beds of coal and cannel shall be gotten, and also with all persons who may be injured by the working and getting of such mines, or in anywise relating thereto, and pay to them full compensation for all damages, immediate and consequential, done or occasioned through or by means or in consequence of the exercise of all or any of the liberties, powers, and privileges hereby granted, and shall indemnify and save harmless the lessor therefrom, the amount of such compensation to be settled in case of difference by arbitration.

12. To make  
plans, &c.,  
half-yearly.

12. THE LESSEES shall within one calendar month after each of the half-yearly days hereby appointed for payment of rent make an exact map and admeasurement in acres, roods, perches, and yards of the gettings of the mines hereby demised during the preceding half-year, such admeasurement to be taken as land measure of —— yards to the perch or pole, and to include all pillars, walls and ranges which may be left as aforesaid, and to particularise the quantities and thickness of each mine separately, or as near as may be, and such map to be on a scale of thirty yards to the inch: AND every such map and admeasurement shall be open at all times to the inspection of the lessor or his agent, who may make copies thereof.

(*m*) The rule of law that where the property in the soil and in the minerals belongs to different persons the mine owner must not work the mines so as to let down the surface, does not apply between a lessor and lessee of mines. The rights of the parties under such a lease must depend on the terms of the contract (*Eadon v. Jeffcock*, L. R. 7, Exch. 379). It is therefore proper to make express provision for protection to the soil and buildings thereon, when intended.

13. It shall be lawful for the lessor and his agent and any other person appointed by him from time to time, and at all times during the continuance of this demise, to descend into any of the mines, pits and shafts which now are or which shall hereafter be sunk, opened, or made within or under the aforesaid lands, or any part thereof, in order to view and examine the state and condition of the said mines and the manner of working the same, and to inspect, measure and dial the same without hindrance or interruption by or from the lessees or their miners, colliers, servants, agents, or workmen, and for going down in the said pits, mines or shafts, and for returning thereout, to have the free use of the engines, machines, gins, whimseys, ropes, baskets, and other utensils of or belonging to the said premises or works necessary and convenient for the purpose, and in measuring, dialling and examining the said premises or works, shall be effectually assisted by the lessees, and their agents, workmen, or servants respectively, without any compensation whatsoever being made for so doing.

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MINES IN  
LANCASHIRE.

13. Liberty  
for lessor to  
descend  
shafts, &c.,  
to inspect  
mines.

14. THE LESSEES shall not at any time during the continuance of this demise, assign, underlet, or otherwise part with the possession of the mines and premises hereby demised, or any part thereof, for all or any part of the term hereby granted to any person or persons whomsoever, without the license and consent in writing of the lessor for that purpose first had and obtained: PROVIDED ALWAYS that the lessor shall not withhold his license or consent from any proposed assignment of the premises without alleging a reasonable cause for so doing, and if any question shall arise as to the reasonableness of the course so alleged, the same shall be settled by arbitration (n).

14. Not to  
assign, &c  
without  
license of  
lessor, but  
license not  
to be un-  
necessarily  
withheld.

15. THE LESSEES shall, at the expiration or sooner determination of the said term hereby granted, deliver up to the lessor the mines and premises hereby demised, and all buildings and erections of brick or stone, and slated chimneys, engine houses, workshops, and engine and machinery foundations standing and being on the said lands, or any of them, and also all such articles (if any) as the lessor shall elect to purchase under the power hereinafter given to him in that behalf, in good and substantial repair and condition, and also all pits and shafts in the said lands, used for the purposes of this demise, in good working order and condition.

15. To  
deliver up  
mines in  
good condi-  
tion at end  
of term.

(n) See *Treloar v. Bigge*, L. R. 9 Exch. 131.

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MINES IN  
LANCASHIRE.

### PART VIII.—THE LESSOR'S COVENANTS.

Eighth part  
—Lessor's  
covenants.

1. For quiet  
enjoyment  
by lessees.

2. Lessees  
may remove  
movable  
machinery,  
&c., within  
six months  
after end of  
term.

1. THE LESSEES paying the several rents hereby reserved, and observing and performing the covenants and conditions herein contained, and on their parts to be observed and performed, shall peaceably and quietly hold and enjoy the mines and premises hereby demised for and during the term hereby granted, without any lawful interruption from or by the lessor, or any person rightfully claiming from, under, or in trust for the lessor.

2. THE LESSEES may at any time or times within six calendar months after the determination of this demise, whether by effluxion of time or otherwise, enter into and upon the said lands, or any part thereof, for the purpose of taking down, removing, and disposing of for their own use and benefit, all the fire and other engines, machines, gins, whimseys, implements, machinery, utensils, articles, and things set up and used in and about the working of the said mines, and also all the furnaces, ovens, kilns, sheds, huts, railways, tramways, and other works (except buildings or erections of brick or stone, and slated chimneys, engine houses, workshops, and engine and machinery foundations) erected and then standing upon any of the said lands for the purpose of working the said mines, unless the lessor shall be desirous of purchasing the same or any of them in pursuance of the provision in that behalf hereinafter contained.

Ninth part  
—General  
provisions.

1. Power of  
distress.

### PART IX.—GENERAL PROVISIONS.

1. IF the rents hereby reserved, or any of them, or any part thereof respectively, shall be behind or unpaid for the space of twenty-eight days next after any of the days whereon the same ought to be paid, then and so often as the case shall happen, the lessor may enter into and upon the mines and premises hereby demised, or any lands which shall for the time being be possessed or occupied by the lessees for the purposes of these presents, and may distrain all or any of the coal, cannel, horses, engines, wheels, trains, whimseys, tools, implements, baskets, machines, or other utensils, matters, and things which shall be found in or upon the same premises, and the same may take, lead, and drive, carry away, and impound, and in pound detain and keep, or otherwise may demean therein according to law, until the rent which shall be then due, and all costs and expenses occasioned by the non-payment thereof, shall be fully paid and satisfied.

2. If the rents hereby reserved, or any of them, or any part thereof respectively, shall be behind or unpaid for the space of sixty days next after any of the days whereon the same ought to be paid as aforesaid, whether the same shall have been legally demanded or not, or if the lessees shall commit any breach of the covenants and conditions contained in this lease and on their parts to be observed and performed, or any of them, then and in any such case it shall be lawful for the lessor at any time thereafter, and although he may not have taken advantage of some previous default of a like nature, into and upon the mines and premises hereby demised, or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess, and enjoy, as of his former estate.

OF COAL  
MINES IN  
LANCASHIRE.

2. Power of  
re-entry.

[PROVIDED ALWAYS, that before exercising the foregoing power of re-entry for or in respect of any breach of the covenants herein contained (except the covenant to pay the rents, or the covenant against assigning or underletting without consent), the lessor shall give to the lessees a notice in writing specifying the breach complained of and requiring them to remedy the same within a reasonable time to be named in such notice, and which notice may also claim compensation for any damage which shall have been caused by such breach, the amount of such compensation to be settled in case of difference by arbitration. And the power of re-entry shall not be exercised if the lessees shall remedy the breach within the time named for that purpose in such notice, and shall also pay to the lessor the compensation to be settled as aforesaid, together with the costs of the arbitration, within one calendar month after the time when the same shall be so settled.] (o)

Proviso  
qualifying  
power of  
re-entry.

3. If at any time during the continuance of this demise the mines hereby demised shall become unworkable by reason of any large outbreak of water not caused by improper working or by any default of the lessees, then and in such case the lessees may determine the lease on the — day of — in any year of the term hereby granted by giving to the lessor twelve calendar months' notice in writing to that effect, but without prejudice to the rights and remedies of the lessor, under or by virtue of these presents, for the recovery of any rent which may then remain unpaid, or in respect of any breach which may have been committed of any of the covenants herein contained on the part of the lessees.

3. Power of  
lessees to  
determine  
lease if  
mines be-  
come un-  
workable.

(o) A proviso qualifying the power of re-entry, as above, may not unreasonably be insisted on by the lessees.



OF COAL  
MINES IN  
LANCASHIRE.

4. Lease to  
determine if  
mines are  
worked out.

4. If all the mines, seams, beds, or veins of coal and cannel hereby demised and getable to profit shall be wholly exhausted before the expiration of the term hereby granted therein, then this lease shall thereupon cease and determine as if the same had expired by effluxion of time, but without prejudice to the rights and remedies of the lessors for the recovery of any rent then remaining unpaid, or in respect of any breach which may have been committed of any of the covenants herein contained on the lessee's part.

5. Power to  
lessor to  
purchase  
plant, &c.  
at end of  
term.

5. If at the end or sooner determination of this demise the lessor shall be desirous of purchasing all or any of the fire or other engines, boilers, gins, whimseys, machines, tools, implements, ropes, chains, skips, sleepers, rolling stock, waggons, and other utensils, articles, and things then standing upon the above-mentioned lands, or any part thereof, and being used or employed in or about the carrying on and working of the mines hereby demised, or for the more convenient occupancy thereof, and shall signify such his desire by notice in writing to the lessees six calendar months at least before the expiration or sooner determination of the said term (unless the said term shall be determined under the power of re-entry hereinbefore contained, in which case the notice may be given at any time within six calendar months after such determination of the said term) then and in such case the articles and things specified in such notice shall be left by the lessees and be taken by the lessor at a valuation to be made thereof, in case of any difference or dispute between the parties as to their value, in the manner hereinafter provided, and the amount of such valuation, when ascertained or settled, shall be paid to the lessees within three calendar months next after such valuation shall have been agreed upon and delivered to the parties, together with interest thereon after the rate of £4 per cent. per annum from the time of such delivery thereof.

6. Arbitra-  
tion clause.

6. If any dispute or difference shall arise between the lessor and the lessees concerning the value of the articles and things which the lessor shall elect to take or retain as aforesaid, or the amount to be paid by the lessor in respect thereof, or touching or concerning any other matter or thing which it is hereby provided shall be settled by arbitration, or touching any clause, matter, or thing whatsoever herein contained, or the operation or construction thereof, or any matter or thing in any way connected with these presents, or the rights, duties, or liabilities

of either party under or in connection with these presents, then and in every such case (unless where hereby otherwise expressly provided), the dispute or difference shall be referred to two arbitrators, one to be appointed by each party in difference, and in case of their disagreement then to an umpire, to be chosen by the arbitrators before entering on the consideration of the matters referred to them; and the arbitrators or their umpire shall have power to determine by whom the costs of the arbitration ought to be borne: AND every such reference shall be deemed an arbitration within the Common Law Procedure Act, 1854, and be subject to the provisions relating to arbitrations contained in the said Act.

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MINES IN  
LANCASHIRE.

7. EVERY NOTICE hereby required or authorized to be given to the lessor may be either given to him personally or left at his usual or last known place of abode in England or Wales, or may be given to such agent or other person, or in such manner as the lessor may from time to time direct; and every notice hereby required or authorized to be given to the lessees may be given to them or either of them personally, or left at their office or counting-house for carrying on the business of their works under these presents.

7. Notices  
how to be  
given.

No. XIV.

LEASE of COAL and IRON MINES in NORTHUMBERLAND.

COAL AND  
IRON  
MINES IN  
NORTHUM-  
BERLAND.

THIS INDENTURE, made the — day of —, 18—, BETWEEN A. B., of, &c. (*lessor*), of the one part, and C. D., of, &c., and E. F., of, &c. (*lessees*), of the other part, WITNESSETH, that in consideration of the rents hereinafter reserved, and the covenants hereinafter on the lessees' part contained, the said A. B., in exercise of the power, &c., doth hereby appoint, grant, and demise unto the said C. D. and E. F., their executors, administrators and assigns, the mines, beds, veins, and seams of coal, ironstone, and fire-clay mentioned and described in the first part of the schedule hereunder written, together with, &c. (*as in the last Precedent, supra*, pp. 82, 83.)

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Schedule.

PART I.—THE MINES DEMISED BY THIS LEASE.

First part.

ALL the mines, beds, veins, and seams of coal, ironstone, and

Description  
of mines.

COAL AND  
IRON  
MINES IN  
NORTHUM-  
BERLAND.

fire-clay, as well opened as unopened, lying or being in or under all those lands situate in the parish of A., in the county of Northumberland, known as —, which lands are delineated on the map or plan drawn in the last skin of these presents, and are therein distinguished by a line of red colour drawn round the outer boundary thereof.

Second part  
—Liberties  
and powers.

**PART II.—LIBERTIES, POWERS, AND PRIVILEGES TO BE EXERCISED AND ENJOYED IN CONNECTION WITH THE ABOVE MINES AND PREMISES.**

1. To sink  
pits, &c.

1. LIBERTY AND POWER to dig, sink, drive, make, repair, and use all such pits, shafts, drifts, levels, water-gates, watercourses, air-gates, and other works as may be necessary or proper for searching, winning, working, and getting the mines and premises hereby demised, and for ventilating and draining the same.

2. To appro-  
priate  
water.

2. LIBERTY AND POWER to appropriate the water upon or within any of the said lands, and to collect and impound the same in ponds, reservoirs, or otherwise, for the purpose of working the said mines and premises, but so that the lessees shall not in any manner foul, impregnate, or otherwise deteriorate the springs or streams of water on the said lands, so as to render them useless or unprofitable.

3. To get  
coal and  
ironstone  
from adjoin-  
ing mines  
by outstroke  
workings.

3. LIBERTY AND POWER to work and get the coal and ironstone from any adjoining mines belonging to or held by the lessees, and to bring the same to the surface through the mines hereby demised, and the pits and shafts thereof, and for that purpose to make drifts and passages by way of outstroke through the barrier of coal hereby covenanted by the lessees to be left: BUT such drifts and passages shall not exceed three in number, and each drift or passage shall not exceed six feet in width, and shall be so made as to be capable of being easily closed by frame-dams whenever and so soon as the use thereof has ceased.

4. To appro-  
priate land  
for stacking  
coal, &c.

4. LIBERTY AND POWER to use and appropriate a sufficient part of the lands adjoining any pits for depositing and heaping thereon the coal and other minerals hereby authorized to be gotten, and all the earth, soil, and other substances dug up and brought to the surface in or about the working of the same.

5. To con-  
vert coal  
into coke  
and calcine  
ironstone,  
and make  
fire-clay into  
bricks.

5. LIBERTY AND POWER in and upon the said lands to convert coal into coke, and to calcine ironstone, and to manufacture fire-clay into bricks and other articles, whether for colliery purposes, or for sale, or otherwise.

6. LIBERTY AND POWER to take, lead, and carry away over the said lands the coal, ironstone, and fire-clay to be gotten as aforesaid, and the coke, bricks and other articles to be made and manufactured under the liberties and powers hereinbefore granted, and to dispose of the same at their own will and pleasure.

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IRON  
MINES IN  
NORTHUM-  
BERLAND.

6. To lead  
and carry  
away coal,  
&c.

7. LIBERTY AND POWER to erect, set up, and make, and to take down and remove, and again to erect, set up, and make in, upon, and over the said lands, workmen's houses, sheds, engines, machinery, furnaces, ovens, kilns, buildings, erections, railroads, and other roads and works necessary or convenient for the effectual working of the mines and premises hereby demised, and the exercise of the several liberties and powers hereinbefore granted.

7. To erect  
houses, &c.

8. LIBERTY AND POWER to dig, work, and take common clay and stone from the said lands, and to manufacture the common clay into bricks and tiles for the purposes of the colliery erections and works hereby authorized, but not for sale or any other purpose.

8. To get  
stone and  
common  
clay for  
colliery  
purposes.

9. ALL other easements, rights, and privileges whatsoever usual and proper for the effectual and convenient working of the said mines and premises, and the exercise of the several liberties and powers hereinbefore granted, according to the most approved custom of mining in the district.

9. Other  
easements.

PART III.—RESTRICTIONS AND CONDITIONS AS TO THE EXERCISE OF THE ABOVE LIBERTIES, POWERS, AND PRIVILEGES.

Third part—  
Conditions,  
&c.

1. ALL surface operations shall be carried on upon such part only of the said lands as shall be selected for that purpose in manner following (that is to say): WHENEVER the lessees shall require to occupy or use any land for surface operations, they shall give a notice in writing to the lessor or his agent specifying the site proposed for such surface operations. If the lessor or his agent objects to the site so proposed, he shall, within fourteen days after receiving such notice, himself select a site, and notify the same in writing to the lessees, and the lessees shall be at liberty at any time within fourteen days after the selection of such site shall have been made and notified to them as aforesaid, but not afterwards, to object to the same as being improper and inconvenient for the purpose for which the same is required, and to notify such objection in writing to the lessor or his agent:

1. Surface  
operations,  
where to be  
carried on.

COAL AND  
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BERLAND.

AND in case of such objection being made and notified as aforesaid, it shall be referred to the inspector for the district appointed under the Coal Mines Regulation Act, 1872, to decide whether the site selected by the lessor or his agent as aforesaid is or is not a proper and convenient site for the purpose for which the same shall be required: AND if the said inspector shall decide against such site, or if the lessor or his agent shall neglect or refuse to select a site for any of the purposes aforesaid for the space of fourteen days after receiving a notice in writing from the lessees requiring him so to do, then and in either of such cases it shall be referred to the said inspector to select a site for the purpose aforesaid, and the selection so made shall be binding on both parties: BUT if the said inspector shall decline to permit the aforesaid reference to be made to him, the matter above directed to be referred to him shall be referred to arbitration under the provisions in that behalf hereinafter contained.

2. Defini-  
tion of  
expression  
"surface  
operations."

2. The expression "surface operations" above used shall mean and include the sinking of pits and shafts, the stacking and heaping of coal and all minerals, the erecting of houses, sheds, engines, machinery, furnaces, ovens, and other buildings and erections, the making and constructing of railroads and other roads, the digging of stone and clay, the burning of clay into bricks, and all other works and operations authorized to be carried on upon the surface of the said lands, or for the carrying on of which it shall be necessary to use or occupy the surface of any land under the liberties, powers, and privileges conferred by the second part of this schedule.

3. Plan and  
sanitary  
arrange-  
ments of  
cottages to  
be approved  
by lessor.

3. No houses for residence shall be erected by the lessees under the liberty and power above granted for that purpose until the plan, accommodation, and sanitary arrangements of such houses shall have been submitted to the lessor and approved of by him; and in case a difference of opinion on any of such points shall arise between the lessor and the lessees, it shall be referred to the inspector for the district appointed under the Coal Mines Regulation Act, 1872, to decide upon the plan, accommodation, and sanitary arrangements of such houses: AND no houses shall be used except for the purpose of residence of agents, miners, and workmen employed in or about the said mines and works, and in particular no trade of any sort shall be carried on in any such houses or any of them.

PART IV.—EXCEPTIONS AND RESERVATIONS OUT OF THIS  
LEASE.

COAL AND  
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LIBERTY for the lessor and his tenants, agents, servants, and workmen to use any railroads and other roads to be made and used by the lessees over the said lands, under the authority of these presents, without paying any rent for the same : AND also liberty for the lessor to make, construct, and use, and to grant and demise to other persons the right to make, construct, and use over the said lands, any railroads or other roads made and used by the lessees under the authority of these presents: PROVIDED NEVERTHELESS, that in the exercise of the liberties hereby excepted and reserved as little hindrance, obstruction or damage as possible be done to the lessees, or to the exercise by them of the liberties, powers, and privileges hereby granted to them.

Fourth part  
—Excep-  
tions.  
—  
Liberty for  
lessor to use  
railroads,  
&c., of  
lessees.

PART V.—RENTS RESERVED BY THIS LEASE.

Fifth part—  
Rents.

1. THE certain yearly rent next hereinafter mentioned (that is to say) the yearly rent of £—— for the first and second years of the term hereby granted, the yearly rent of £—— for the third and fourth years of the said term : AND the yearly rent of £—— for the remainder of the said term : THE certain yearly rent payable for the time being as aforesaid to be paid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year : FOR and in respect of which certain yearly rent the lessees may work and get in every year from and out of the said mines and premises such a quantity of coal as at the rates hereinafter mentioned would produce for that year a tentale rent equal in amount to the said certain rent : BUT the said certain rent shall always be paid, whether such quantity shall in fact be gotten or not.

1. Certain  
rent.

2. THE RENT of 12s. for every ten of screened coals, and 6s. for every ten of small coals (and so in proportion for any less quantity than a ten) which shall be raised or gotten from or out of the said mines and premises over and above the quantity which the lessees are hereinbefore authorized to work and get in respect of the said certain rent.

2. Tentale  
rents for  
coal.

3. THE RENT of 6d. for every ton of ironstone which shall be raised in the raw state from the said mines and premises, and so in proportion for any less quantity.

3. Rent for  
ironstone.

COAL AND  
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MINES IN  
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BERLAND.

4. Rent for  
fire-clay.

4. THE RENT of 6*d.* for every ton of fire-clay which shall be raised in the raw state from the said mines and premises for sale and manufacture (except fire-clay used by the lessees in and about the erection, alteration and maintenance of buildings for colliery purposes, and any other works authorized under the liberties and powers hereby granted, and which fire-clay they are hereby authorized to use for such purposes rent free).

5. Rent for  
coal, &c.,  
gotten from  
adjoining  
mines.

5. THE RENT of — shillings for every ten of screened coal, and — shillings for every ten of small coal, and — for every ton of ironstone, and — for every ton of fire-clay the produce of any adjoining mines which shall be brought to the surface through or by means of the mines hereby demised, and the pits and shafts thereof under the liberty in that behalf hereinbefore granted :

ALL WHICH RENTS, 2ndly, 3rdly, 4thly, and 5thly, above reserved, shall be paid respectively on the — day of — and on the — day of — in every year for and in respect of the coal, ironstone and fire-clay raised during the then preceding half-year.

6. Surface  
rent.

6. A YEARLY RENT for and in respect of every acre of land, the surface whereof shall be occupied or used by the lessees under the authority of these presents, double in amount of the value per acre of the same lands for agricultural purposes at the time when such occupation or use shall commence, and so in proportion for any less quantity than an acre, the said surface rent to be paid half-yearly on the — day of — and the — day of — in every year, the first of such payments to be made on such of the said half-yearly days as shall happen next after such occupation or use shall have commenced, and the last of such payments to be made on the half-yearly day of payment which shall happen next after such occupation or use shall have ceased, and the land shall have been restored and rendered fit for cultivation again, or shall have been paid for at the fee simple value as provided in the lessees' covenant in that behalf hereinafter contained : AND if any difference of opinion shall arise as to what ought to be considered the occupation or use of the surface of any land for the purposes aforesaid, or as to the day on which such occupation or use shall have commenced, or as to whether such land shall have been restored and rendered fit for cultivation, or as to the amount of rent payable under this reservation, the matter in difference shall be settled by arbitration.

7. THE YEARLY RENT of 1s. for every footpath over the said lands which shall be used by the lessees or their workmen, or any of them, in or about the carrying on of the works hereby authorized: PROVIDED ALWAYS that this reservation shall not be construed as a permission to the lessees or their workmen to make or use any footpath other than any roads hereinbefore authorized to be made or used without the consent of the lessor.

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MINES IN  
NORTHUM-  
BERLAND.

7. Footpath  
rent.

PART VI.—PROVISIONS RELATING TO THE SAID RENTS.

1. ALL the aforesaid rents shall be paid free from any deduction except for property tax and land tax.

Sixth part—  
Provisions  
relating to  
rents.

2. FOR the purposes of the above reservations, a ten of coal shall be considered to contain 440 bolls, or 18½ Newcastle chaldrons, or 53 cwt. each: AND the term "small coal" shall be considered to mean all coal which shall have passed through a screen, the bars of which shall not exceed  $\frac{5}{8}$ ths of an inch asunder, and the term "screened coal" shall be considered to mean all coal which will not pass through such screen.

1. Rents to  
be free from  
deduction.  
2. Definition  
of terms  
"ten,"  
"small  
coal," and  
"screened  
coal."

3. ALL coal used by the lessees for the usual and customary purposes of the colliery, and for domestic consumption in the houses and offices of agents and workmen for the time being employed in and about the said mines and premises shall be free from rent.

3. Coal used  
for colliery  
purposes,  
&c., to be  
rent free.

4. IF in any year of the said term the lessees shall not get and raise from the said mines and premises such a quantity of coal as at the above-mentioned rates would produce for that year a tentale rent, equivalent to the certain rent payable for that year, then and in every such case the lessees may in any subsequent year or years of the said term, get and raise from or out of the said mines and premises such a quantity of coal as shall be required to make up the deficiency without paying any rent for the same, other than the said certain rent: But the overworkings of any preceding year or years of the said term shall not come in aid of or be applied to make good the deficiency or short workings in any subsequent year or years.

4. Power  
to lessees to  
make up  
short work-  
ings.

PART VII.—THE LESSEES' COVENANTS.

1. THE LESSEES shall pay to the lessor the rents reserved by this lease at the times and in the manner above appointed for payment thereof, and shall also pay and discharge all taxes, rates, cesses, charges, and assessments or impositions whatsoever now

Seventh  
part—  
Lessees'  
covenants.

1. To pay  
rents, taxes  
&c.



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2. Not to  
assign, &c.,  
without  
license.

3. To pay  
every year  
compensa-  
tion for  
injuries to  
buildings,  
crops, &c.

4. To keep  
books of  
account, &c.

5. To keep  
plans of  
working.

or hereafter to be taxed, charged, assessed or imposed upon or in respect of the premises hereby demised, or any part thereof except land tax and property tax properly payable by the landlord.

2. THE LESSEES shall not, during the said term, assign, underlet or otherwise part with the mines and premises hereby demised, or any part thereof, without the license or consent in writing of the lessor for that purpose first had and obtained.

3. THE LESSEES shall, at the expiration of one calendar month after the end of every year of the said term, pay to the lessor for the use of himself or his tenants, full and reasonable satisfaction for the injuries or spoil which, during each such preceding year, shall have been committed to or upon the aforesaid lands, or upon any houses, buildings, crops, or other property thereon by means or in consequence of the exercise of any of the liberties, powers, and privileges granted by this lease, and the amount of such satisfaction shall in case of dispute be settled by arbitration under the provision hereinafter contained.

4. THE LESSEES shall at all times, during the said term, keep or cause to be kept at the office or counting-house of the colliery, to be situate in or contiguous to some part of the said lands, correct and intelligible books of account upon such plan or principle as is generally adopted in such cases, which books shall contain accurate entries of the quantity of coals and other minerals wrought and brought to bank from the mines and premises hereby demised, and from any adjoining or other mines worked through the mines hereby demised as aforesaid: AND ALSO shall at their own expense furnish to the lessor or his agent true and correct copies of such accounts, and of all bills of presentment whenever thereunto required.

5. THE LESSEES shall at all times, during the said term, cause to be made and kept at the said office or counting-house, true, correct, and intelligible plans and sections of all the said mines, hereby demised, and of any mines worked through the mines hereby demised, which plans and sections shall show as well the operations and workings which have been carried on as also all dykes, troubles, veins, faults, and other disturbances which have been observed and encountered in such workings and operations: AND all such plans and sections shall be made, amended, and filled up by and from actual surveys to be made for that purpose at the end of every period of three months, and the lessees shall at their own cost and charges furnish to the lessor

or his agent true and correct copies of such plans and sections when thereunto required.

6. It shall be lawful for the lessor and his agents and servants at all reasonable times during the said term to enter into and have free access to the said office or counting-house, for the purpose of examining and inspecting the said several books of account, plans and sections, and also all railway accounts and vouchers for carriage, and to take copies thereof and make extracts therefrom respectively.

7. THE LESSEES shall provide, and at all times during the said term keep at or near the pit or each of the pits at which the produce of the mines and premises hereby demised shall be brought to bank, a good and properly constructed weighing machine, and shall weigh or cause to be weighed therein all coal and other minerals brought to bank from or out of the mines hereby demised, or from or out of any adjoining or other mines worked through the mines hereby demised under the liberty in that behalf hereinbefore granted, and shall cause the weights ascertained as aforesaid to be forthwith duly registered at the machine-house or houses: AND it shall be lawful for the lessor at all times during the said term to employ any person or persons to be present at the raising and weighing of the coal and other minerals, and to keep accounts thereof, and to check the accounts kept by the lessees.

8. THE LESSOR and his agents and servants may, at any time or times during the said term, examine and test each and every weighing machine to be provided and kept by the lessees as aforesaid, and the weights used therewith in order to ascertain whether the same respectively are correct and in good repair and order: AND if upon any such examination or testing any such weighing machine or weights shall be found incorrect or out of repair or order, it shall be lawful for the lessor or his agent to require that the same be adjusted, repaired, and put in order by and at the expense of the lessees, and to hinder the use thereof in the meantime: AND if such requisition be not complied with within fourteen days after the same shall have been made, the lessor or his agent may cause the said weighing machine and weights respectively to be adjusted, repaired, and put in order, and may recover the expense of so doing from the lessees: AND if upon any such examination or testing as aforesaid any error shall be discovered in any weighing machine or weights to

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6. Lessor to have access to books of account and plans.

7. Lessees to keep weighing machine at the mouth of each pit.

Lessor may appoint person to be present at weighing.

8. The lessor may test weighing machines.

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the prejudice of the lessor, such error shall be considered to have existed for three calendar months previous to the discovery thereof, or from the last occasion of so examining and testing the same weighing machine or weights in case such occasion shall be within such period of three months: AND the several rents hereinbefore reserved shall be paid or accounted for accordingly.

To work  
mines  
properly.

9. THE LESSEES shall at all times during the said term win and work the said mines and premises hereby demised in a proper, fair, and regular manner, and according to the most approved practice of winning and working mines of the like nature respectively in the counties of Durham and Northumberland, and with as little damage as possible to the surface and to the messuages, buildings, walls, fences, and other property thereon: AND ALSO shall at all places, when the said mines hereby demised shall adjoin any mines not included in this lease, leave unworked within the limits of this demise, a sufficient barrier, not less than twenty-five yards in thickness of whole coal and other mineral then for the time being in course of working, and shall not break through or thin the same without the consent in writing of the lessor or his agent, except that the lessees may make such drifts or passages by way of outstroke, as are hereinbefore authorized: AND the lessees shall, upon the expiration or sooner determination of the said term, or when and so soon as any such drift or passage shall cease to be used, which shall first happen, provide sufficient frame-dams for stopping and securing the said drifts and passages, and shall by and with such frame-dams stop and secure the same accordingly.

1. To secure  
pits and  
shafts.

10. THE LESSEES shall well and properly secure and keep open with timber, stone, or other durable means, all pits and shafts to be sunk or made in the said lands, and make and maintain sufficient walls and fences round every such pit or shaft: AND ALSO shall at all times during the said term keep the said mines and beds hereby demised free from water and from foul air as far as possible.

.. To per-  
mit lessor to  
descend into  
mines to  
inspect  
same.

11. THE LESSEES shall permit the lessor and his agents, servants and workmen at all reasonable times during the said term, to descend any pits or shafts of the lessees into the mines and works hereby demised, and to examine the said mines and works and make surveys and plans thereof, and afterwards to return from the same without any hindrance or interruption

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whatsoever: AND for that purpose shall permit the lessor and his agents, servants and workmen, to use all the machinery and appurtenances employed in or about the said mines and works, and with overmen, deputy-overmen, or other proper persons employed by the lessees, and acquainted with the workings of the said mines, shall effectually assist such person or persons as aforesaid, in going down any such pits and shafts, and in entering into, examining, and surveying the said mines and works in manner aforesaid, and in returning to the surface.

12. THE LESSEES shall at the end or sooner determination of the said term deliver up to the lessor in good order, repair, and condition, and fit for the future working of the said mines and premises hereby demised, all engines, houses and buildings of stone or brick, pits, shafts, watercourses, air-gates and levels in the said mines and premises, except any pits, shafts, or other works which shall have been abandoned or disused in the ordinary and fair course of working of the said mines and premises: AND ALSO all and singular the moveable machinery, works, articles and things which shall be in, upon, or under the said lands, and which the lessor shall elect to purchase under the power in that behalf hereinafter given to him: AND ALSO shall at the end of the said term bank up all coals at the pit, not exceeding three months' vend, in such manner as to be no hindrance to an incoming tenant.

12. To deliver up mines, &c., in good working order at end of term.

13. THE LESSEES shall at or before the expiration or sooner determination of the said term, cause to be restored to their original or natural condition all such parts of the said land as shall have been appropriated or used for any of the purposes of this demise, or shall (at the option of the lessor) pay to the lessor the value of the fee simple of the same, such value to be estimated at thirty years' purchase of the rack rent or value per acre of the same land for agricultural purposes at the time when the occupation or use thereof for the purposes of this demise shall have commenced.

13. At end of term to restore lands or pay fee simple value.

14. THE LESSOR shall be at liberty to have in every year of the said term fifty tons of screened coals, or such less quantity as he may require, at a price equal in amount to the cost of working by the lessees for the same, he the lessor removing and carrying the same from the pit's mouth at his own expense.

14. Lessor to have 50 tons of coal yearly at cost price.

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### PART VIII.—THE LESSOR'S COVENANTS.

Eighth part  
— Lessor's  
covenants.  
1. For quiet  
enjoyment  
by lessees.

1. THE LESSEES paying the rents hereby reserved, and observing and performing the covenants and conditions herein contained, and on their part to be observed and performed, shall and may at all times during the said term, peaceably and quietly possess and enjoy the mines and premises hereby demised, and exercise the several liberties, powers and privileges hereby conferred, without any interference by the lessor or any person lawfully or equitably claiming under him.

2. Lessees  
may carry  
away coal,  
&c., for six  
months  
after end of  
term.

2. THE LESSEES may, within the space of six calendar months after the expiration or sooner determination of the said term, carry away and dispose of all the coal and other minerals which shall have been raised and gotten from the said mines and premises during the said term, and shall not have been carried away, and may also remove for their own use the moveable machinery, plant, articles, and things belonging to or used or employed in or about the said mines and works, or such of them as shall not be purchased by the lessor under the power in that behalf hereinafter contained; the lessees doing as little damage as possible to any building in which any such machinery, plant, articles or things may be affixed.

Ninth part  
— General  
provisions.

### PART IX.—GENERAL PROVISIONS.

1, 2. Powers  
of distress  
and re-  
entry.

3. Lessees  
may abandon  
mines  
on giving  
twelve  
months'  
notice.

1, 2. (*Powers of Distress and Re-entry, supra*, pp. 96, 97).

3. IF the lessees shall be desirous at the end of any year of the said term hereby granted to abandon and yield up the mines and premises hereby demised, and of such their desire shall give notice in writing to the lessor twelve calendar months at least before the period of such proposed abandonment, then this lease shall at such last-mentioned period cease and determine, but without prejudice to the rights and remedies of the lessor for any rent in arrear or for any previous breach of the lessees' covenants herein contained.

4 Lessor  
may purchase  
machinery,  
&c., at end  
of term.

4. IF at the end or sooner determination of this lease the lessor shall be desirous of purchasing all or any of the moveable machinery, articles and things in, upon, or under the above-mentioned lands or any part thereof, and used or employed in or about carrying on and working the mines hereby demised, or for the more convenient occupancy thereof, and shall signify

such his desire by a notice in writing to the lessees, &c. (*Power to lessor to purchase machinery, &c., supra, p. 98*).

5, 6. (*Arbitration Clause and Notices how to be given, supra, pp. 98, 99*).

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No. XV.

OF STONE  
QUARRIES.

LEASE of STONE QUARRIES and CHALK and SAND PITS  
—COVENANT by LESSEE to make a ROAD, and other  
COVENANTS.

THIS INDENTURE, made the — day of —, 18—, BETWEEN Parties.

A. B., of, &c., (*lessor*), of the one part, and C. D., of, &c. (*lessee*), of the other part, WITNESSETH, that in consideration, &c., the said A. B. doth hereby grant and demise unto the said C. D., his executors, administrators and assigns, the quarries, pits, liberties, and privileges described and specified in the first part of the schedule hereunder written, EXCEPT AND RESERVED out of this demise, &c. (*supra, pp. 82, 83, mutatis mutandis*).

Demise of  
quarries, &c.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Schedule,

PART I.—THE QUARRIES, PITS, LIBERTIES, AND PRIVILEGES  
DEMISED BY THIS LEASE.

First part.

1. ALL those stone quarries and chalk pits in and under certain parcels of land called — and —, situate in the parish of —, in the county of —: AND ALSO all that sand pit situate and being at the north-west corner of a certain parcel of land called —, and situate in — as aforesaid, and which said quarries, chalk pits, and sand pits are now in the occupation of the said C. D., and the said lands and certain other lands of the lessor adjoining thereto are delineated in the plan drawn in the margin of these presents, and are therein coloured pink.

1. Descrip-  
tion of  
quarries,  
&c., de-  
mised.

2. LIBERTY for the lessee to work and get from or out of the lands coloured pink on the said plan by means of the aforesaid quarries and pits, so much chalk, fire-stone, hearth-stone, burr-stone and sand as he shall think fit: PROVIDED ALWAYS that the precise places from or out of which the said chalks, stone, and

2. Liberty  
to work and  
get chalk,  
&c.

Places out of  
which chalk  
&c., to be

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got to be appointed by lessor or by reference to arbitration.

sand shall be gotten, shall from time to time be set out and appointed for that purpose by the lessor or his agent, with liberty, however, for the lessee to object to any place so set out and appointed as not being suitable and convenient for the purposes aforesaid, and in such case the question whether the place objected to is suitable and convenient shall be settled by arbitration: AND if the decision shall be against the lessor, he or his agent shall thereupon set out and appoint some other place for the purpose aforesaid, and the lessee shall have the like right of objecting thereto, and of having the question settled by arbitration, and so on from time to time until the lessor or his agent shall set out and appoint some place for the purpose aforesaid, to which the lessee shall not object, or which upon a reference to arbitration, shall be determined to be suitable and convenient for the purpose aforesaid.

3. To stack  
chalk, &c.

3. LIBERTY for the lessee to lay, place, and stack in or upon any convenient part of the said lands, all or any of the chalk, lime, stone, sand, and other produce, to be gotten under the authority of these presents, and all earth and rubbish which shall be gotten, thrown up, or collected in carrying on the works hereby authorized.

4. To convey  
chalk, &c.,  
over road.

4. LIBERTY for the lessee to carry and convey all such chalk, lime, stone, sand, and other produce, earth and rubbish as aforesaid, and all materials used in or about the said works over or along the said lands between the said quarries and pits and the public highway, by means of the road hereinafter covenanted to be made by the lessee.

5. To lay  
down rail-  
ways, &c.

5. LIBERTY for the lessee to make, lay down, and place on the said lands such railways and tramways with proper sidings and other conveniences as shall be necessary or convenient for carrying and conveying any such chalk, lime, stone, sand, and other produce, earth, rubbish and materials as aforesaid, between the said quarries and pits and the ——— Railway, and to use the same railways, tramways and sidings for the purposes aforesaid.

6. To erect  
two cottages  
for residence  
of foreman  
and work-  
men and to  
erect sheds,  
&c.

6. LIBERTY for the lessee to erect and set up on any convenient part of the said lands, two cottages for the residence of his foreman or workmen employed in or about the said works, and such and so many sheds and buildings as he may deem necessary or convenient for carrying on the works hereby authorized, and to use the sheds and buildings now standing on the said lands for the like purposes.

7. LIBERTY for the lessee to erect and set up on such part or parts of the said lands as the lessor or his agent shall set out and appoint for the purpose (but not elsewhere) such and so many lime-kilns as the lessee may think necessary or expedient for the purpose of converting the said chalk into lime.

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7. To set up lime-kilns in places to be applied by lessor.

8. LIBERTY for the lessee to do all such other acts and things, and to use all such other devices and means for carrying on the works hereby authorized, as shall or may be found necessary or convenient according to the most approved practice in the district.

8. To do other things, &c., for carrying on works.

## PART II.—EXCEPTIONS AND RESERVATIONS.

1. LIBERTY for the lessor and all persons authorized by him to use the road hereinafter covenanted to be made by the lessee either with or without horses, cattle, carts and carriages.

Second part—  
Exceptions and reservations.

1. Liberty for lessor to use road.

2. LIBERTY for the lessor and all persons authorized by him to dig and get chalk, stone, and sand from or out of any part of the lands coloured pink on the said plan for the use of the estate or the lessor, but not for sale: BUT this liberty shall not enable the lessor, or any other person to dig or get chalk, stone, or sand from the quarries or pits of the lessee without his consent.

2. Liberty for lessor to get chalk, &c., out of lands for use of his estate, but not from lessee's pits.

## PART III.—RENTS RESERVED BY THIS LEASE.

Third part—  
Rents.

1. THE yearly rent of £200 to be paid without deduction, except for property tax, during the whole of the term hereby granted, by equal half-payments on the — day of — and the — day of — in every year, the first of such payments to be considered as payable on the — day of —, 18—.

1. Certain rent.

2. A RENT, or sum of 6*d.*, for every ton of stone over and above 10,000 tons which shall or may be gotten from or out of the said lands under the authority of this lease in any year of the said term after the — day of —, such royalty to be paid without any deduction, except as aforesaid, on the — day of — in every year, for and in respect of the stone gotten as aforesaid during the then preceding year, and to be in addition to the said yearly rent of £200.

2. Rent for stone.

3. THE yearly rent of £20 to be paid for and in respect of each and every lime-kiln exceeding the number of five, which the lessee shall erect or set up on the said lands for the purpose of converting the said chalk into lime to be paid half-yearly, the

3. Rent for every lime-kiln exceeding five.



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first payment thereof to be made on the first of the half-yearly days which shall happen next after the lessee shall have commenced erecting and building each and every such additional lime-kiln, and to be paid during the remainder of the said term.

Fourth part  
—Lessee's  
covenants.

#### PART IV.—LESSEE'S COVENANTS.

1. To pay  
rents, taxes,  
&c.

1. THE LESSEE shall pay the several rents hereinbefore reserved and made payable at the times and in the manner hereinbefore appointed for the payment thereof, and shall also pay the land-tax, sewers-rate, and all other taxes, charges, rates, assessments, and impositions whatsoever, which at any time during the said term shall be payable in respect of the said quarries, pits, and premises hereby demised (except the landlord's property tax).

2. To make  
a road:

2. THE LESSEE shall forthwith commence, and with all convenient speed, prosecute and complete at his own cost in a good and workmanlike manner, and to the satisfaction of the lessor or his agent, a hard and substantial road not less than fifteen yards wide from the said quarries and pits to ——— Heath, the site and direction of the said road to be determined by the lessor or his agent, and shall at all times during the said term, at his own cost keep the said road in good and substantial repair and condition, and the same in such good repair and condition deliver up to the lessor at the end of the said term and shall at all times during the said term permit the lessor and all persons authorized by him to use the said road either with or without horses, cattle, carts, and carriages: PROVIDED ALWAYS that if any question shall arise at the end of the said term whether the said road shall be in good and substantial repair and condition according to the foregoing covenant, such question, and also the question what sum of money (if any) ought to be paid by the lessee to the lessor for or on account of the breach of the said covenant, shall be settled by arbitration: AND the money (if any) awarded to be paid for and in respect of such breach may be either recovered by the lessor as liquidated damages, or may (at his option) be set off by him against any money which he may have to pay to the lessee at the end of the said term for and in respect of any lime-kilns, cottages, sheds, buildings, plant, or other articles or things under the covenants and provisions hereinafter contained.

3. To keep  
account of

3. FOR the purpose of ascertaining the amount of rent for

stone payable under the above reservation in that behalf, the lessee shall, after the — day of —, keep proper and correct books of account, showing the amount of stone gotten from time to time under the authority of these presents, and shall, previously to the — day of —, in the year 18—, and in every subsequent year of the said term, deliver to the lessor or his agent a correct abstract of the said books of account for the then preceding year, and shall verify the same by the statutory declaration of himself or his foreman, if required: AND shall permit the lessor and his agent at all reasonable times to inspect the said books of account to take extracts therefrom.

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all stone  
gotten.

4. THE LESSEE shall at all times during the said term keep all cottages, sheds, buildings, lime-kilns and other erections now standing, or which shall hereafter be erected or set up in or upon the said lands under the authority of these presents, in good and substantial repair and condition, and the same in such good and substantial repair deliver up to the lessor at the end of the said term.

4. To keep  
cottages,  
&c., in  
repair.

5. THE LESSEE shall at all times during the said term well and effectually fence and guard the quarries, pits, railways, tramways and other ways now existing, or which shall at any time during the said term be made under the authority of these presents, and shall do as little damage or injury as possible to the surface of the said lands in the exercise of the liberties hereby granted: AND shall make full satisfaction to the tenants or occupiers of the said lands for any damage or loss which may be sustained by them by reason of any horses, cattle, sheep, or other animals falling into or getting on the said quarries, pits, railways, tramways, or other ways, or otherwise by the neglect or default of the lessee or his agent, servants, or workmen, the amount of such compensation to be settled by arbitration in case of difference.

5. To fence  
and guard  
the quarries  
&c.

6. THE LESSEE shall at all times carry on the works hereby authorised in a proper and workmanlike manner, and after the best and most approved method of carrying on similar works in the neighbourhood.

6. To carry  
on works  
properly.

7. It shall be lawful for the lessor or his agent at all reasonable times during the said term to enter into and upon the quarries and pits of the lessee, and to inspect the state and condition of the same, and of the works therein, and if any of the said works shall be found to be carried on in an improper and unworkman-

7. Lessor  
may enter  
and inspect  
works.

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like manner, to give notice in writing to the lessee or his agent to rectify such improper working within ten days after such notice shall have been so given, within which time the lessee shall so far as practicable rectify the same: AND if the lessee shall fail or neglect to rectify such improper workings within the time aforesaid, then the lessor or his agent may enter, and at his option either stop the said works until the said improper workings shall be rectified, or until satisfaction shall be made for the damage or injury occasioned thereby (such satisfaction in case of dispute to be settled by arbitration), or may himself rectify the said improper workings, and recover from the lessee the expenses incurred in so doing, either by action or distress upon the premises as for rent in arrear.

8. Not to  
remove any  
plant in last  
year.

8. THE LESSEE shall not, during the last year of the said term, remove or destroy any railways, tramways, engines, machinery, or plant standing and being on the said lands and used for the purposes of the works hereby authorised without the consent of the lessor, but shall keep the same on the said lands or in or about the said works, in order to enable the lessor to exercise the option of purchasing the same hereafter conferred on him.

9. To restore  
site of  
railways,  
&c., which  
may be  
removed.

9. IF the lessee shall at any time during the said term or at the end thereof, remove any railways, tramways, buildings or other erections standing and being on the said lands, which he shall be at liberty to remove according to the true construction of these presents, then and in such case the lessees shall, if required by the lessor, restore the site of the railways, tramways, buildings or other erections so removed as aforesaid, to the same state and condition as far as is practicable, as the same was in previously to the use thereof for the purposes aforesaid.

10. Not to  
assign with-  
out license.

10. THE LESSEE shall not assign, underlet, or otherwise part with the premises hereby demised, or any part thereof, without the consent in writing of the lessor.

Fifth part—  
Lessor's  
covenants.

#### PART V.—THE LESSOR'S COVENANTS.

1. For quiet  
enjoyment  
by lessor.

1. THE LESSEE paying the several rents hereby reserved, and observing and performing the covenants and conditions herein contained, and on his part to be observed and performed, shall peaceably and quietly hold and enjoy the premises hereby demised for and during the term hereby granted, without any

lawful interruption from or by the lessor or any person right-fully claiming from or under him.

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2. If the term hereby granted shall expire by effluxion of time the lessor shall pay to the lessee the value of the lime-kilns which shall have been erected by the lessee (not exceeding five in number), and also any cottages, sheds and buildings which shall have been erected and set up on the said lands under the authority of these presents, such value to be determined by arbitration, in case the parties differ about the same : PROVIDED ALWAYS that the sum to be paid for the value of the said cottages, sheds, and buildings, shall not exceed £500 : PROVIDED ALSO that this covenant shall not apply in the event of this lease being determined under the power of re-entry hereinafter contained.

2. At end of term to pay to lessee for lime-kilns up to five in number; and for cottages, &c.

3. IT shall be lawful for the lessee, within six calendar months after the expiration or sooner determination of the term hereby granted, to remove and carry away, and convert to his own use, all the railways, tramways, machinery, plant, utensils, articles, and things which shall have been laid down or provided by the lessee for the purposes of the works hereby authorised, except such of the said premises as the lessor shall purchase under the power in that behalf hereinafter given to him, and if more than five lime-kilns shall be erected or set up by the lessee on the said lands, this liberty of removal shall extend to such additional lime-kilns, unless the lessor shall elect to purchase the same.

3. Lessee may remove railways, &c., if not purchased by lessor within six months from end of term.

#### PART VI.—GENERAL PROVISIONS.

Sixth part—  
General  
provisions.

1. If the rents hereby reserved or any of them, or any part thereof respectively, shall be behind or unpaid for the space of twenty-one days next after any of the days whereon the same ought to be paid, then and so often as the case shall happen, the lessor may enter into and upon the premises hereby demised, or any lands which shall for the time being be possessed or occupied by the lessee, for the purposes of these presents, and may distrain all or any of the chalk, stone, sand, horses, engines, machinery, plant, materials, utensils, matters, and things which shall be found in or upon the same premises, and the same may take, lead and drive, carry away, and impound, and in pound detain and keep, or otherwise dispose thereof according to law, until the rent or royalty which shall be then due, and all

1. Power of  
distress.

OF STONE  
QUARRIES.

expenses occasioned by the non-payment thereof, shall be fully paid and satisfied.

2. Power of  
re-entry.

2. IF the rents hereby reserved, or any of them, or any part respectively, shall be behind or unpaid for the space of thirty days next after any of the days whereon the same ought to be paid as aforesaid, and whether the same shall have been lawfully demanded or not, or if the lessee shall make default in observing or performing the covenants and conditions contained in this lease, and on his part to be observed and performed, then and in any such case it shall be lawful for the lessor at any time thereafter, and although he may not have taken advantage of some previous default of a like nature, into and upon the premises hereby demised, or any part thereof in the name of the whole, to re-enter, and the same to have again, re-possess, and enjoy as of his former estate.

3. Power for  
lessee to  
purchase  
plant, &c.

3. IF at the expiration or other sooner determination of the term hereby granted, the lessor shall be desirous of purchasing all or any of the railways, tramways, plant, machinery, utensils, articles and things which shall have been laid down, set up, or provided by the lessee for the purposes of the works hereby authorised, and shall signify his desire in that behalf by a notice in writing to be given to the lessee at his office on the said works within one calendar month after the determination of the said term, then and in such case the said railways, tramways, machinery, plant, utensils, articles and things, or such part or parts thereof as the lessor shall elect to purchase as aforesaid, shall be left by the lessee, and taken by the lessor at a price to be determined by arbitration in case of difference: AND if more than five lime-kilns shall be erected or set up by the lessee on the said lands, this power of purchasing shall extend to such additional lime-kilns.

4. (*Arbitration Clause, supra, p. 98.*)

LEASE FOR  
LIVES.

#### NO. XVI.

LEASE for LIVES on the dropping of a LIFE pursuant to a COVENANT for perpetual RENEWAL contained in a LEASE for LIVES which is SURRENDERED.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c (*lessor*), of the one part, and C. D, of, &c. (*lessee*), of the other

part (*Recite lease for lives of E. F., and G., and lives and life of survivors and survivor of them, and the covenant for renewal contained in the lease,—death of E.*): AND WHEREAS

LEASE FOR LIVES.

the said C. D. hath requested the said A. B. to grant to him the said C. D. a renewed lease of the said premises pursuant to the covenant for this purpose contained in the said lease, for the life of H. in the place of the said E. deceased: NOW THIS INDENTURE WITNESSETH that in pursuance of the

Application for renewed lease.

aforesaid covenant, and in consideration of the sum of £—— to the said A. B. paid by the said C. D. on or before the execution of these presents (*the receipt, &c.*), and in consideration of the surrender of the said recited lease, and of the rent and covenants hereinafter reserved and contained, and on the part of the lessee, his heirs and assigns, to be paid, observed, and performed, he the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, ALL, &c. (*parcels*), To HOLD the same unto the said C. D., his heirs and assigns, from the date of these presents, for and during the lives of the said F., G., and H., and the survivors and survivor of them, and the life of the longest liver of them, YIELDING AND PAYING therefor during the said term the yearly rent of £——, by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of —— and the —— day of ——, the first of such quarterly payments to be made on the —— day of —— (*Covenant by lessee to pay rent, rates, and taxes during the said term, to keep in repair—to permit lessor to inspect—to insure*); AND THE SAID A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., his heirs, and assigns, that in case, on the decease of such one of them the said F., G., and H., as shall first die, the said C. D., his heirs or assigns shall within six calendar months from the dropping of such life give to the said A. B., his heirs and assigns, or leave at his or their usual or last known place of abode, a notice in writing requesting a new lease of the premises for the lives of such two of them the said F., G., and H., as shall be then living, and the life of one other person to be nominated in that behalf by the person or persons giving or leaving such notice, and shall within the said period pay the sum of £—— to the said A. B., his heirs or assigns, by way of fine for the renewal of such lease, then and in such case the said A. B., his heirs or assigns, shall and will within such period as aforesaid, at the request and cost

Pursuant to covenant and in consideration of fine.

Lessor grants premises to lessee for three lives.

Covenants by lessor to renew the lease on the dropping of a life.

LEASE FOR  
LIFE.

of the said C. D., his heirs or assigns, grant unto him or them, on the surrender of this present lease, a new lease of the said premises for the lives aforesaid, according to such notice, upon the same terms, and under and subject to the same covenants, provisoes, and declarations as are declared in this present lease, including this covenant for renewal.

IN WITNESS, &c

OF RIGHT OF  
SPORTING.

## No. XVII.

## LEASE of a RIGHT of SPORTING.

Parties.

Demise of  
right of  
sportingto lessee for  
seven years  
if he shall so  
long live.At yearly  
rent.Covenants  
by lessee,

to pay rent,

and taxes in  
respect of  
keeper's  
lodge.  
To keep a  
game-  
keeper.

THIS INDENTURE, made the --- day of ---, 18---, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part : WITNESSETH, that in consideration of the rent and lessee's covenants hereinafter reserved and contained, THE said A. B. doth hereby demise unto the said C. D., ALL THAT the exclusive right of hunting, coursing, shooting, fishing, and sporting in, over, and upon the manors of, &c., AND ALSO all that the keeper's lodge situate at --- aforesaid, now in the occupation of --- (except and reserved out of these presents unto the said A. B., his heirs and assigns, the exclusive right of shooting and sporting in, over, and upon the several lands coloured red in the plan hereto annexed, and the exclusive right of fishing in the river A., between the points marked C. and D. on the said plan). TO HOLD the said premises unto the said C. D., from the --- day of ---, last past, for and during the term of seven years thence next ensuing, if the said C. D. shall so long live. YIELDING AND PAYING therefor, the yearly rent of £---, by equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in each year, with a proportionate part of the said rent, up to the day of the decease of the said C. D. within the said term, the first payment to be made on the --- day of --- next. AND the said C. D. doth hereby covenant with the said A. B., his heirs and assigns, in manner following, that is to say, that he the said C. D. will pay the said rents at the time hereinbefore appointed for payment thereof, and will also pay all rates and taxes payable in respect of the said keeper's lodge : AND ALSO will, during the said term, at his own cost, keep at least one effective gamekeeper, who shall have the supervision of, and preserve the game upon, the said

manors, and who shall live in the said keeper's lodge: **AND** **ALSO**, will not, during the said term, keep, or encourage to be kept, an excessive number of hares or rabbits upon the said manors, or any part thereof, but will kill, destroy, and keep down the same as much as possible: **AND** that in case the said C. D. shall neglect to kill, destroy, and keep down the said hares and rabbits as aforesaid for the space of one calendar month after a notice in writing signed by the said A. B., his heirs or assigns, or his or their agent shall have been served on him, or left at his last or usual place of abode, requesting him so to do, then it shall be lawful for the said A. B., his heirs or assigns, to authorise the several tenants upon the said manors to kill and destroy the same accordingly; **AND ALSO** that he the said C. D. will, at all times during the said term, keep up the head of game on the said manors, and will to the best of his power preserve the eggs and young of game birds from being destroyed or injured; **AND ALSO** will not, at any time, assign or underlet, or otherwise part with this present lease, or the rights and privileges hereby demised, or any of them, to any person or persons whomsoever, without the consent in writing of the said A. B., his heirs or assigns, first had and obtained for that purpose. **AND** the said A. B. doth hereby covenant with the said C. D., that he paying the yearly rent hereby reserved, and observing and performing the covenants herein contained on his part, shall and may peaceably and quietly have, hold, and enjoy the rights and privileges hereby demised without any lawful interruption from or by the said A. B., or any person or persons claiming through, under, or in trust for him. **AND** that if this lease shall determine by the death of the said C. D. during the said term, he the said A. B., his heirs or assigns, will pay or allow to the executors, administrators, and assigns of the said C. D., all expenses incurred by the said C. D. in preserving and rearing the game, from the end of the preceding season up to the day of the death of the said C. D.

IN WITNESS, &c.

OF RIGHT OF SPORTING.

Not to encourage an excessive number of hares or rabbits.

Power to lessor to authorise tenants to destroy hares and rabbits in case of lessee's default.

To preserve game and eggs.

Not to assign or underlet without license of lessor.

Covenant by lessor for quiet enjoyment by lessee.

And if lessee dies before end of term to allow him expenses of preserving from end of preceding season.



## TRUSTEES <sup>(a)</sup>.

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It is proposed in this Dissertation to consider—I. The nature of trusts and the different kinds of trusts. II. The powers and duties of trustees for sale. III. The transmission of powers and trusts. IV. In what instances trustees for sale can give a discharge for the purchase-money. V. Purchases by a trustee from himself or from his *cestui que trust*. VI. The powers of trustees as to the investment of trust moneys, and the provisions of the recent statutes in reference thereto. VII. Disclaimer. VIII. Appointments of new trustees, and the construction of powers for this purpose. IX. The provisions of the Trustee Relief Acts. X. Miscellaneous points relating to trustees.

### I.—*The nature of a Trust and the different kinds of Trusts.*

Definition  
of a trust.

A trust may be defined as an obligation attached to the ownership of real or personal property or of some estate in, or power over, real or personal property, binding the person in whom such property, estate, or power is vested, to hold or exercise it for the benefit of some other person or persons, and which obligation is enforceable by means of the equitable jurisdiction of the Court.

Bare trust.

A trust may be a bare trust, or an active trust. A bare trust is where the instrument imposes on the trustee no duty beyond that implied by law from the bare relation of

(a) *Settlements* form the next class of instruments, of which precedents are given in this collection. As the objects of a settlement usually require the intervention of trustees, and as marriage is the ordinary occasion of a settlement,

two introductory dissertations, the one on the powers, estates, duties, and responsibilities of *trustees*, and the other on the law affecting the relation of *husband and wife* and their interests in each other's property, are here inserted.

trustee and *cestui que trust*, e.g., where land is vested in A. in trust for B., the simple duty of A. being to convey the land to the latter or according to his direction whenever required so to do, and in the meantime to permit him to receive the rents and profits. An *active* Active trust. trust is where the instrument imposes on the trustee some special duty beyond the simple obligation above referred to, e.g. a trust to sell, or to manage, or to receive the rents and apply them in a particular manner.

A trust originally active may become a bare trust, either by reason of all the special duties having been performed, or by reason of the obligation to perform such duties having been put an end to by the act of all the persons beneficially entrusted in their performance, which act is usually called an election. Thus, if land is given to a trustee in trust to apply the rents during the minority of A. for his maintenance, and on his attaining twenty-one in trust for A. in fee simple; the trust becomes a bare trust so soon as A. attains twenty-one. Again, if Election. land is vested in a trustee in trust to sell and divide the proceeds between a number of persons, all of whom, being *sui juris*, join in requesting him not to sell but to convey the land to them as real estate, the trust from the date of such request becomes a bare trust.

The foregoing description of a bare trust naturally leads up to a definition of the term "bare trustee," as used in the Vendor and Purchaser Act, 1874, sec. 6, and in the Land Transfer Act, 1875, sec. 48. It is submitted that a bare trustee may for the purposes of these Acts be defined as "a trustee, who has no duties to perform beyond the simple obligation to convey the land to or according to the direction of his *cestui que trust*, whenever required so to do, and in the meantime to permit him to receive the rents and profits" (b). Bare trustee as the term is used in recent Acts.

(b) Messrs. Dart and Barber (Dart, V. & P. p. 517) conclude that the term will be held to mean "a trustee to whose office no duties were originally attached, or who, although such duties were originally attached to his office, would on the requisition of his *cestui que trust*, be compellable in equity to convey the estate to

them or by their direction, *and has been requested by them so to do*. This definition has been approved by V.-C. Hall, with the omission of the words in italics (*Christie v. Ovington*, L. R. 1 C. D. 279).

It is submitted that Messrs. Dart and Barber's definition is not quite correct either with or without the

Express and constructive trusts.

Trusts may be also divided into *express* trusts, and *implied*, or *constructive* trusts, and this distinction is rendered important by sec. 25 of the Statute of Limitations, 3 & 4 W. 4, c. 27, which excepts express trusts from the operation of the general enactment.

What is an express trust.

An *express* trust is a trust expressly declared by a deed, will, or other written instrument (*c*).

Instances of implied or constructive trusts.

An *implied* or *constructive* trust is one arising by implication or construction of law from certain circumstances; as, where land is purchased by and conveyed to A., but with money belonging to B., A. is treated as a trustee for B. unless there is such a relation between the parties as will lead to the presumption that a gift was intended by B. to A. Again, if land is conveyed to a trustee, upon trusts which partly fail or do not exhaust the whole legal interest conveyed, there will, as a general rule, be an implied trust to the extent of the undisposed of interest for the grantor, which trust is usually called a resulting trust. Again, after a contract for sale of land, the vendor is deemed a trustee for the purchaser subject to the payment of the purchase money. So also it is a rule that a trustee cannot derive any personal advantage from the administration of the trust property, and consequently if a trustee renews a lease in his own name, he will be deemed to hold the new lease for the benefit of his *cestui que trust*.

Against whom a trust may be enforced.

A trust may be enforced against the person in whom it was originally reposed, and all persons deriving title to the property under him, whether by descent, representation, conveyance, or devise, other than purchasers for valuable consideration without notice of the trust.

On death or disclaimer.

If a testator leaves property upon trusts, and the

words in italics proposed to be omitted by the Vice-Chancellor.

Suppose land to be vested in A. in fee simple in trust to sell and divide the proceeds between B. and C., it is clear that B. and C. being *sui juris* might require A. to convey the land to them, and it is equally clear that until such requisition is made he is not a bare trustee. On the other hand if land is vested in A. in fee simple in trust for B. in fee simple, there can be no doubt that A. is a bare trustee, even though he has not

been requested to convey the legal estate to B. It is submitted that Messrs. Dart and Barber's definition should run thus, "A trustee who has no duties attached to his office which remain to be performed, and who would on the requisition of his *cestui que trust* be compellable in equity to convey the legal estate to them, or according to their direction." This is very similar to the definition in the text.

(*c*) *Petre v. Petre*, 1 Drew, 393.

trustee dies in his lifetime or disclaims, the legal estate will devolve on the heir-at-law, who will take it subject to the trust. It is apprehended that the heir in such a case is an express trustee for the purposes of section 25 of 3 & 4 W. 4, c. 27.

of trustee appointed by will, legal estate descends to heir subject to trust.

Heir is in such case express trustee, *semble*.

## II. *Powers and duties of trustees for sale.*

Trustees for sale should use proper diligence to obtain the best price, and should take care to satisfy themselves as to the value of the property before they proceed to a sale (*d*). If by the terms of the trust they are not limited to any particular mode of sale, they may sell either by public auction or private contract, but as a general rule they should not sell by private contract at a sum below what the property has been previously valued at; and if they sell by auction, they should properly advertise the intended sale.

Duties of trustees for sale as to price and mode of sale.

Trustees may sell in one lot or in several lots and subject to conditions applicable to the state of the title, but they must not impose conditions calculated to depreciate the property without reasonable ground, even though authorized by the terms of the trust to sell "subject to such stipulations as to title as they may think fit" (*e*).

As to conditions of sale.

A trustee may fix a reserved bidding at a sale by auction and buy in, if that bidding is not reached (*f*), but in this, as in other matters relating to the trust, he must act providently. Unless authorized by the terms of his trust to defer a sale, his duty is to sell as soon as he conveniently can; if he does not, and the property falls in value, he runs the risk of being held answerable for the loss, particularly if he has in the meantime bought in at an auction at a sum higher than that ultimately realized, or otherwise refused a fair offer (*g*).

Reserved biddings.

(*d*) *Conolly v. Parsons*, 3 Ves. 625, note; *Campbell v. Walker*, 5 Ves. 678; *Ord v. Noel*, 5 Mad. 438. See also *Harper v. Hayes*, 2 De G. F. & J. 542; *Selby v. Bowie*, 4 Giff. 300.

(*e*) *Dance v. Goldingham*, L. R. 8

Ch. 902.

(*f*) *Re Peyton's Settlement*, 30 Beav. 252.

(*g*) *Taylor v. Tabrum*, 6 Sim. 281; *Fry v. Fry*, 27 Beav. 144; *Sug. V. & P.* 50.

Powers conferred on trustees for sale by Lord Cranworth's Act.

By Lord Cranworth's Act (*h*) applicable to instruments executed after the 28th Oct., 1860, trustees with a power of sale are expressly authorized to exercise such power by selling either together or in lots and either by public auction or private contract and subject to special conditions, also to buy in and receive contracts for sale and resell without being responsible for loss.

Trust for sale must be exercised in accordance with conditions prescribed.

A trust for sale to take effect at a future time, or on certain conditions, can only be exercised at the time and in accordance with the conditions prescribed. Thus, where a testator devised an advowson to trustees upon trust to sell on the death of A. A. was the incumbent, so that on his death no sale could be made until the vacancy was filled up. It was held that the Court had no jurisdiction to authorise a sale in A.'s lifetime, on the ground that it would be beneficial to the parties (*i*). Again, where a testator gave real and personal estate to trustees upon trust for sale, and declared that no sale should be made without the consent in writing of his sons and daughters, it was held that a contract entered into by the trustees after the death of one of the daughters could not be specifically enforced, although her representative concurred (*j*).

Sale of land without timber, or surface without minerals.

Trustees for sale must sell the timber with the estate, although the tenant for life is unimpeachable of waste (*k*), and in the recent case of *Buckley v. Howell* (*l*), it was decided that the ordinary power of sale and exchange does not authorise a sale by the trustees of the surface, reserving the minerals. In consequence of this decision, which affected many existing titles, an Act was passed (*m*) which confirmed all sales, exchanges, partitions, and enfranchisements previously made, of the surface without the minerals, or of the minerals without the surface (*n*), and also authorized similar dispositions in future, so that no such future disposition should be made without the sanction of the Court of Chancery, to be obtained on a petition, which sanction, when once obtained, is sufficient for the purpose of

(*h*) 23 & 24 Vict. c. 145, secs. 1 and 2.

(*i*) *Johnstone v. Baber*, 8 Beav. 233.

(*j*) *Sykes v. Sheard*, 33 Beav. 114.

(*k*) *Cockerell v. Cholmeley*, 1 R. & M. 418.

(*l*) 29 Beav. 546.

(*m*) 25 & 26 Vict. c. 108.

(*n*) Sec. 1.

future dispositions without any further application to the Court (o).

It seems clear that under a power of sale in the usual form directing that the sale money be laid out in the purchase of other lands and authorizing interim investments of it until so laid out, the trustees need not at the time of sale have in view any particular estate to be purchased with the proceeds (p). Consequently the provision in Lord Cranworth's Act (q) exempting purchasers from obligation to inquire whether any particular re-investment is in contemplation, is superfluous.

Trustees selling under a power need not have in view any particular reinvestment in land.

A power of sale vested in trustees by a settlement, the proceeds being directed to be laid out in the purchase of lands to be settled to the like uses as the lands sold, or being otherwise liable to trusts corresponding with those uses, does not transgress the rule against perpetuities, although no limit is imposed by the terms of the instrument as to the period during which it may be exercised. Such a limit is in fact implied from the nature and object of the power, which is intended to enable alienation during the continuance of the particular estates created by the settlement, and when those estates determine and the lands become vested in fee simple in possession, either under the ultimate limitation in the deed or by reason of a disentailing assurance, the power ceases also. Thus, if lands are settled on A. for life, with remainder to the sons of A. successively in tail, with remainder to B. in fee simple, and a power of sale unlimited in terms is vested in trustees, such power remains in force during A.'s life, and if he leaves male issue until a tenant in tail attains twenty-one and bars the entail, and upon that event happening, or on the death of A. if he has no male issue, the power ceases (r). And it seems that the existence of a jointure rent-charge, the fee simple being vested in possession subject to such jointure, will not keep alive the power (s).

Unlimited powers of sale in a settlement valid.

Such powers cease when the estate vests in fee simple in possession.

(o) Sec. 2.

(p) 2 Sug. Pow. 487; and cases there referred to.

(q) 23 & 24 Vict. c. 145, s. 2.

(r) *Mortlock v. Buller*, 10 Ves. 315; *Biddle v. Perkins*, 4 Sim. 135; *Waring v. Coventry*, 1 M. & K. 249; *Nelson v. Callow*, 15 Sim. 353;

*Lantsbury v. Collier*, 2 K. & J. 709.

(s) *Wheate v. Hall*, 17 Ves. 86. The decision of V.-C. Bacon, in *Re Cooke's Contract*, L. R. 4 C. D. 454, seems *prima facie* to conflict with the doctrine stated in the text, but his Honour must have considered in that

Power remains, although an undivided share has become vested in possession.

If property is settled, as to one undivided share for one class of persons, and as to the other share for another class, the fact of one share having become absolutely vested in possession does not put an end to the power, which remains in force until the entirety has become so vested (*t*).

Power of sale, where it authorizes a mortgage.

A power to sell in order to raise a sum of money implies, it has been said, a power to mortgage, which is a conditional sale (*u*) ; but this is only the case when the purpose of the trust will be answered by a mortgage, for if the intention appears that a sale out and out shall be made, a mortgage will not be a valid exercise of the power (*v*).

A partition authorized by a power of exchange, but not by a power of sale.

A power of sale does not authorize a partition (*x*), and until lately it was considered doubtful whether a partition could be carried into effect under a power of exchange (*y*). But the doubt on this point may be considered as set at rest by a recent case (*z*), where Jessel, M. R., reviewed all the authorities, and arrived at the conclusion that a partition of an estate held in moieties could be made under such a power, and intimated his opinion, although it was not necessary to decide the point, that there was no difference in this respect between an estate held in moieties, and one held in a greater number of undivided shares (*a*).

Land remains real estate, until power is exercised.

Land subject to a discretionary power of sale, retains its character as real estate.

Trust property may be sold conjointly with other property.

Trust property may be sold conjointly with property belonging to other persons or held on different trusts, if by reason of the situation of the two properties, or for any other reason, a joint sale is likely to produce a better price than separate sales. (*b*) On this principle a

case, that the authority to sell was an absolute trust for conversion, and not a mere power.

(*z*) *Trower v. Knightley*, 6 Mad. 134 ; *Taite v. Swinstead*, 26 Beav. 525 ; *Re Brown's settlement*, L. R. 10 Eq. 349.

(*u*) *Mills v. Banks*, 3 P. Wms. 9.

(*v*) 1 Sug. Pow. 538 ; *Haldenby v. Spofforth*, 1 Beav. 390 ; *Stroughill v. Anstey*, 1 De G. M. & G. 635 ; *Devaynes v. Robinson*, 24 Beav. 86.

(*x*) *M<sup>c</sup>Queen v. Farquhar*, 11 Ves 467.

(*y*) *Dart V. & P.* 78, Sug. Powers, p. 856, 857, 859.

(*z*) *Frith v. Osborne*, L. R. 3 C. D. 618.

(*a*) See also *Abel v. Heathcote*, 4 B. C. C. 278 ; *Doe v. Spencer*, 2 Exch. 752.

(*b*) *Cavendish v. Cavendish*, L. R. 10 Ch. 319 ; *Re Cooper, &c.*, L. R. 4 C. D. 803.

joint sale by trustees of the reversion expectant on a lease, and by the owner of the lease, was held good (a). In the case of a joint sale the trustees have authority to agree with the other vendor as to the apportionment of the purchase-money, which must be done before the purchase is completed, and the purchaser dividing his money according to such apportionment is safe unless he has notice that the apportionment is an improper one (b). If, however, the two properties are so situate that, *primâ facie*, nothing will be gained by a joint sale, the *onus* lies on the trustee to show that it is a prudent and right thing (c).

If a trustee enters into a contract of sale which is under the circumstances a breach of trust as between himself and his *cestui que trust*, the Court will refuse to enforce its specific performance either at the suit of the vendor or of the purchaser, and will even at the suit of the *cestui que trust* restrain the vendor from carrying it into effect, leaving the purchaser to his remedy in damages, if any (d). If under such a contract the property has been actually conveyed to the purchaser, the question whether it will be set aside will depend on whether he had notice of the breach of trust.

Contract if  
a breach of  
trust not  
enforced.

### III. *The transmission of powers and trusts.*

A power, properly so called, *i.e.* an authority enabling the donees to revoke or alter interests existing in default of and until its exercise, must be strictly followed, and can only be exercised by the persons named or indicated for that purpose by the instrument creating it. Thus a power of this kind given to several persons by name and their heirs cannot be exercised by the survivors (e). But a power given to persons by some general description, as "my trustees," "my nephews," &c., and not by their names, may be exercised by the

Power when  
exercisable  
by survi-  
vors.

(a) *Morris v. Debenham*, L. R. 2 C. D. 540.

(b) *Re Cooper, &c.*, *ubi supra*.

(c) *Ibid.*

(d) *Mortlock v. Buller*, 10 Ves. 392; *Ord. v. Noel*, 5 Mad. 438;

*Turner v. Harvey*, Jac. 169; *Rede v. Oakes*, 4 De G. J. & S. 513; *Dance v. Goldingham*, L. R. 8 Ch. 913.

(e) *Townsend v. Wilson*, 1 B. & Ald. 608; *Hall v. Dewes*, Jacob, 189.



survivors, or other the persons answering the description, so long as the plural number remains (*f*). In a case where a testator gave a power to his "said trustees," and the survivor of them, and one disclaimed, it was held, that the sole acting trustee could exercise it (*g*).

Trusts follow the estate.

But a trust, as distinguished from a mere power, will in general follow the estate, and be exercisable by the persons or person on whom the estate devolves. Thus, if land is devised to two or more trustees, their heirs and assigns, upon trust to sell (*h*), or upon trust that they their heirs and assigns shall sell, the trust will be exercisable by the survivor or survivors, and in a case where the devise was to the trustees, their *respective* heirs and assigns, upon trust that they, their *respective* heirs and assigns, should sell, the word "respective" was rejected, and it was held that the survivor might execute the trust (*i*).

Devisees of surviving trustee, not assign by deed, may act where word "assigns" is used; secus, if word "assigns" is omitted.

Where a trust is directed to be executed by the trustee, his heirs and *assigns*, or by the heirs and assigns of the survivor of several trustees, it is settled that a *devisee* by will (*j*), but not an *assign* by deed (*k*), of the trustee or surviving trustee can execute the trust. But if the word "assigns" is omitted, the trust cannot (according to the present state of the authorities), be performed by the devisee (*l*).

If a trust is made exercisable by the heirs or the executors or administrators, and not by the assigns, of a surviving trustee, and the trustee devises the trust property, neither his heir nor personal representative, nor his devisee can exercise the trust, the former because he has not the legal estate, the latter because not within the terms of the original trust (*m*).

It follows from what has been already stated that

(*f*) 1 Sug. Pow. 144; Byam v. Byam, 19 Beav. 58.

(*g*) Eaton v. Smith, 2 Beav. 236.

(*h*) Lane v. Debenham, 11 Hare 188; Watson v. Pearson, 2 Exch. Rep. 581.

(*i*) Jones v. Price, 11 Sim. 557.

(*j*) Titley v. Wolstenholme, 7 Beav. 425; Hall v. May, 3 K. & J. 585; Ashton v. Wood, 3 S. & G.

436.

(*k*) Bradford v. Belfield, 2 Sim. 264.

(*l*) Cooke v. Crawford, 13 Sim. 91; Stevens v. Austen, 30 L. J. Q. B. 212; 7 Jur. N. S. 873.

(*m*) Burt's estate, 1 Drew, 319; Wilson v. Bennett, 5 De G. & Sm. 475.

the devisee of a trustee cannot delegate the trust to his assigns. Consequently, where a will contains a devise of estates vested in the testator as trustee, and also a power to appoint new trustees in the usual form, this power applies only to the property of which the testator was beneficial owner, and it is incorrect upon an exercise of the power to convey to the newly appointed trustees the estates vested in the testator as a trustee.

Trustee cannot delegate the trust to his assigns.

Where by reason of the death or disclaimer of the trustees appointed by a will, the land devolves on the heir at law, subject to the trusts, which trusts are of a nature involving the exercise of judgment and discretion, as, *e.g.*, a trust to sell or to lease, the heir cannot himself execute them (*n*), but new trustees must be appointed, and the heir will be compelled to execute all proper deeds for vesting the legal estate in them.

If heir at law, on whom legal estate devolves by reason of death or disclaimer of trustees, cannot exercise trusts involving discretion.

If a will contains a direction to sell, and no person is named for that purpose, and the proceeds of the sale are to be applied by the executors in the execution of their office, a power to sell in them will be implied (*o*).

When executors can sell.

#### IV. *In what cases trustees for sale can give a discharge for the purchase-money.*

In cases not coming within the operation of either of the Acts afterwards mentioned in this section, a purchaser from a trustee is liable to see that his purchase-money is properly applied, unless the instrument expressly declares that the trustee's receipt shall be a good discharge, or unless such an intention is to be inferred from the nature of the trust. Thus, if the trust be for the payment of debts generally or of debts and legacies (*p*), or if the sale is for the benefit of a person or class of persons who, or some of whom, *may* be infants at the time of the sale (*q*), or if the application of the money requires time and discretion,—as, for instance, if it is to be invested in the purchase of land (*r*), or on real security (*s*),—in all these cases it

Cases in which under old law trustees can give good results.

Where proceeds are to be applied upon trusts requiring time.

(*n*) *Brown v. Higgs*, 8 Ves. 561 ; *Robson v. Flight*, 34 L. J. Ch. 226, 4 De G. J. & S. 608.

(*o*) *Tylden v. Hyde*, 2 Sim & Stu. 238 ; *Forbes v. Peacock*, 11 Sim. 152 ; *Gosling v. Carter*, 1 Coll. 644.

(*p*) *Johnson v. Kennett*, 3 M. & K. 624 ; *Page v. Adam*, 4 Beav. 269.

(*q*) *Sowarby v. Lacy*, 4 Mad. 142.

(*r*) *Doran v. Wiltshire*, 3 Sw. 699.

(*s*) *Locke v. Lomas*, 5 De G. & S. 326 ; *Wood v. Harman*, 3 Mad. 368.

is unreasonable to suppose that the settlor or testator can have intended that a purchaser shall be bound to see to the application of the purchase-money, and the trustees can therefore give a good discharge.

Receipt of  
all trustees  
necessary.

The receipt of all the trustees is required in order to give a discharge for money payable to them in that character.

Statutory  
powers to  
give receipts  
22 & 23 Vict.  
c. 35, s. 23.

By the 23rd section of the 22 & 23 Vict. c. 35, it is enacted that "the *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security."

23 & 24 Vict.  
c. 145.

Again, the 29th section of the 23 & 24 Vict. c. 145, declares that the receipts in writing of any trustees or trustee for any money payable to them or him by reason or in exercise of any trusts or powers reposed or vested in them or him shall be discharges. The last-mentioned Act applies to all instruments executed subsequently to the 28th of August, 1860, except so far as any such instrument may negative or vary its operation.

All the  
trustees  
must join  
in the  
receipt.

All the trustees must join in the receipt in order to give a valid discharge to the person paying the money. But when the money is in fact received by one of several trustees, the others joining in the receipt for the sake of conformity, any trustee so joining is not necessarily liable to the *cestui que trust* as if he had actually received it. If, however, he permits his co-trustee to retain and act with it contrary to the trust, he becomes liable for the misapplication (*t*).

Executor's  
receipt for  
proceeds of  
chattels  
real.

Chattels real vest in the executor for the payment of the testator's debts, so that, although they may be specifically bequeathed, the executor's receipt is a sufficient discharge for purchase-money paid to him in that character (*u*).

(*t*) *Brice v. Stokes*, 11 Ves. 319.

(*u*) *Dart, V. & P.* 548.

V. *Purchases by a trustee from himself or from his cestui que trust.*

A trustee for sale cannot purchase the trust property from himself, nor, where there are several trustees, can one buy from the others. The sale is not, however, void *ab initio*, but is liable to be set aside, as a matter of course, by the *cestui que trust*, provided that he applies to the Court for that purpose within a reasonable time ; and it is not necessary to show that the trustee has taken any advantage. If prior to the setting aside of the sale, the trustee has sold at an increased price, the *cestui que trust* may claim the advantage (*v*). Trustee for sale cannot buy from himself.

The Court will, however, sometimes authorise a purchase by a trustee of the trust property on being satisfied that such purchase is for the benefit of the *cestuis que trust* (*w*). It is conceived that in all such cases the trustee applying for leave to purchase would have to pay the costs of the suit. Court will sometimes authorise purchase by trustee.

With regard to purchases by a trustee from his *cestui que trust*, the rule has been thus stated by Lord Eldon : " The rule I take to be this, not that a trustee cannot buy from his *cestui que trust*, but that he shall not buy from himself. If a trustee will so deal with his *cestui que trust* that the amount of the transaction shakes off the obligation that attaches upon him as trustee, then he may buy. The rule is, that a trustee who is entrusted to sell and manage for others undertakes in the same moment in which he becomes a trustee not to manage for the benefit and advantage of himself. It does not preclude a new contract with those who have entrusted him. The *cestuis que trust* may, by a new contract, dismiss him from the character of trustee ; but even that transaction, by which they dismiss him, must, according to the rules of this Court, be watched with the most guarded jealousy ; and for this reason, that the law supposes him to have acquired all the knowledge a trustee may acquire, which may be very useful to him, but the communication of which to the *cestui que trust* the Court can never be sure he has made when Purchases by trustee from cestui que trust under what circumstances valid.

(*v*) *Fox v. Mackreth*, 2 B. C. C. *Campbell v. Walker*, 5 Ves. 609.  
400 ; *Killick v. Flexney*, 4 *ib.* 161 ; (*w*) *Farmer v. Dean*, 32 Beav. 327.

entering into the new contract by which he is discharged. Whether the trustee has made advantage or not, if the connection does not satisfactorily appear to have been dissolved, it is in the choice of the *cestui que trust* whether they will take back the property" (x). In another case it was observed by the same judge, "It is not, in my opinion, necessary to show that the trustee has made an advantage. The principle is, that as the trustee is bound by his duty to acquire all the knowledge possible to enable him to sell to the utmost advantage for the *cestui que trust*, the question what knowledge he has obtained, and whether he has fairly given the benefit of that knowledge to the *cestui que trust* which he always acquires at the expense of the *cestui que trust*, no Court can discuss with competent sufficiency or safety to the parties" (y).

Where *cestui que trust* takes upon himself management of trust property.

In a case where the *cestui que trust* had full information, and took upon himself the management of the property and of the sale, making or directing the surveys and fixing the value, a purchase by the trustee from such *cestui que trust* was supported, the Court observing, "As to the objection to a purchase by the trustee, the answer is that a trustee may purchase from the *cestui que trust* provided there is a clear and distinct contract, ascertained to be such after a jealous and scrupulous examination of all the circumstances, that the *cestui que trust* intended the trustee should buy, and there is no fraud, no concealment, no advantage taken by the trustee of information acquired by him in the character of trustee" (yy).

Sale by trustees to tenant for life valid.

A sale by trustees under a power of sale and exchange to the tenant for life, whose consent is necessary to the exercise of the power, is a valid transaction (z), the reason being, that the power of giving or withholding his consent is given to the tenant for life for his own benefit, and he is not in a fiduciary position with respect to it (zz). And the rule that a purchase by a trustee from his *cestui que trust* is liable to be impeached does

Purchase by bare trustee or disclaiming trustee good.

(x) *Ex parte Lacey*, 6 Ves. 625.

(y) *Ex parte James*, 8 Ves. 348.

(yy) *Coles v. Trecothick*, 9 Ves. 246.

See also *Downes v. Grazebrook*, 3 Mer. 208; *Luff v. Lord*, 34 Beav.

220; *Dover v. Buck*, 11 Jur. 580.

(z) *Howard v. Ducane*, T. & R. 81.

(zz) *Dicconson v. Talbot*, L. R. 6 C. A. 32.

not apply to a bare trustee who has no duties to perform, as, for example, to a trustee to preserve contingent remainders, or to a case where land is given to A. in fee in trust for B. (an adult) in fee. In either of these cases the trustee may purchase from the beneficiaries of the property (a). And a disclaiming trustee may purchase from the acting trustee (b).

In a case where a trustee for sale bought the trust property at an auction and died intestate, it was held as between the heir and next of kin of such trustee, that the heir was not entitled to have the contract completed for his benefit (c).

Purchase by trustee at auction not good as between his heir and next of kin.

The terms on which the Court decrees a re-conveyance of trust property purchased by the trustee are, in the absence of actual fraud, the re-payment by the *cestui que trust* of the purchase-money, with interest at 4 per cent., and the value of all substantial improvements, the trustee on the other hand accounting for the rents, or if he has been in possession, being charged with an occupation rent (d).

Terms on which a re-conveyance by trustee will be ordered.

#### VI.—*The powers of trustees as to the investment of trust monies.*

Previously to recent statutes, a trustee under an instrument which contained no express power of investment was bound to invest in £3 per Cent. Annuities.

Power of trustees as to investment.

But under the operation of recent statutes (e) a trustee not expressly forbidden so to do by the terms of his trust, may now invest in any of the parliamentary stocks or public funds, or in any security the interest of which is guaranteed by Act of Parliament, or in Stock of the Bank of England, or Ireland, or East India Stock, charged on the revenues of India, or in Metropolitan Consolidated Stock (f), or on real securities in any part of the United Kingdom.

Investments which may be made of trust funds.

And where trustees are authorised by the terms of

What investments may

(a) *Parkes v. White*, 11 Ves. 209 ;  
*Pooley v. Quilter*, 4 Drew. 184.

(b) *Stacey v. Elph*, 1 M. & K. 195.

(c) *Ingle v. Richards*, 28 Beav. 361.

(d) *Lewin on Trusts*, p. 340.

(e) 22 & 23 Vict. c. 35, s. 32 ; 23

& 24 Vict. c. 38, ss. 10-12 ; 23 & 24 Vict. c. 145, s. 25 ; 30 & 31 Vict. c. 132. Order of Court of Chancery, dated 1st Feb., 1861.

(f) Metropolitan Board of Works Act, 1871, s. 13.

be made where power extends to Railway debentures.

their trust to invest in bonds or debentures of Railway Companies, they may buy debenture stock of such companies (*g*), or the nominal debentures or debenture stock issued by local authorities under the Local Loans Act, 1875 (*h*), but a power to invest in the securities of a Railway Company does not authorise a purchase of Preference shares (*i*).

Power of investment carries with it a power to vary investments.

A power to invest trust monies carries with it the power to vary the investments, and under a power to invest in the public funds, the trustees may sell out stock and invest the proceeds in any security now authorised by law for trust funds (*j*), but in a case where a sum of Bank Annuities was settled without any express power to change the investment, it was held that no change could be made under the statutory power (*k*).

When proportion of value may be advanced on mortgage.

Where an instrument authorises the trustees to lend on real security, they may safely advance on freehold lands to the extent of two-thirds of their value ; but an advance to this extent should not be made on the security of buildings, or of any other property of a fluctuating or deteriorating character (*l*). And in such case they should take due precaution to ascertain the value and completeness of the security (*m*).

A trustee may not lend on the security of leaseholds without a special authority (*n*).

Turnpike tolls and railway debentures.

In *Robinson v. Robinson* (*o*) it was held that turnpike road bonds and mortgages of the tolls and toll houses were real securities ; so that under a will containing a power to invest on real securities, the trustees were justified in retaining a part of the testator's property which was thus invested. It may be gathered, however, from the observations of the Court in that case, and from more recent cases, that a new investment in such securities would not be considered a proper exercise of a power to invest in real securities ; and it

(*g*) 34 Vict. c. 27.

(*h*) 38 & 39 Vict. c. 33, s. 27.

(*i*) *Harris v. Harris*, 29 Beav. 107.

(*j*) *Re Clergy Orphan Corporation*, L. R. 18 Eq. 280.

(*k*) *Re Ward*, 2 J. & H. 191.

(*l*) *Stickney v. Sewell*, 1 M. & Cr.

8 ; *Stretton v. Ashmall*, 3 Drew. 9 ;  
*Budge v. Gummow*, L. R. 7 Ch. 719.

(*m*) *M'Leod v. Annesley*, 16 Beav. 600.

(*n*) *Fyler v. Fyler*, 3 Beav. 550  
*Fuller v. Knight*, 6 Beav. 205.

(*o*) 1 De G. M. & G. 247.

has been expressly decided that such a power does not authorise an investment on railway debentures (*p*).

Although a power of sale is usually inserted in mortgages, it was not, prior to Lord Cranworth's Act, a breach of trust to accept the security without such a power (*q*), and it is apprehended that since that Act a trustee would be justified, if acting *bond fide*, not only in dispensing with an express power, but also in negating the application of the statutory power.

Trustees may waive the power of sale in a mortgage.

A trust to invest implies a power to do all that may be requisite to carry the trust into execution, and therefore confers on the trustees by implication a power to give discharges for the money on its being paid off (*r*).

Trust to invest authorises trustee to give receipts.

Trustees cannot lend on personal security under a power to invest the trust funds at their discretion (*s*), or under a direction to lay out "on such good security as the trustees can procure and may think safe" (*t*); and in a case where trustees were authorised to invest on any securities they might think fit, it was held that an investment in the preference stock of a railway company bearing a high rate of interest was not authorised, because such security could not be considered as a permanent one (*u*).

Lending on personal security.

If trustees retain uninvested, or on an improper investment, money which, by the terms of their trust, they ought to have invested in the 3 per Cents., the *cestuis que trust* have the option of charging the trustees either with the principal sum retained and interest thereon at 4 per cent., or with the amount of the 3 per Cents. which would have been purchased if the money had been properly invested. Again, if trustees have improperly lent or used the trust money in trade, the *cestuis que trust* have the option to charge the trustee either with the profits actually made or with interest at 5 per cent., that being the ordinary rate of interest paid on capital in trade. But if the trustees are authorised

Extent of liability of trustees in case of improper investment.

(*p*) *Mant v. Leith*, 15 Beav. 524 ;  
*Mortimore v. Mortimore*, 4 De G. &  
J. 472.

(*q*) *Farrar v. Barraclough*, 2 Sm.  
& Gif. 231.

(*r*) *Franco v. Franco*, 3 Ves. 75.

(*s*) *Pocock v. Reddington*, 5 Ves.  
794.

(*t*) *Wilkes v. Steward*, Coop. 6.

(*u*) *Stewart v. Sanderson*, L. R.  
10 Eq. 26.



to invest either in the public funds or on real securities and they do neither, but carelessly leave the money in some other state of investment, they cannot be required to do more than replace the principal, with interest at 4 per cent., and the *cestuis que trust* have no option to charge them with the stock which might have been purchased (x).

Where executors neglect to convert excess of income of unconverted property beyond 3 per cent. is capital.

Terms, if trustees make unauthorised investment

Where personal property is bequeathed upon trust for A. for life, with remainders over, and the trustee or executor, instead of converting the whole into 3 per Cents. where he ought so to do, permits a portion to remain outstanding on an unauthorised investment, producing a large annual income which the tenant for life receives, the trustee will be compelled to account to the remainderman, not only for the principal money, but also for the excess of income paid to the tenant for life beyond the dividends which would have been received by him if the money had been invested in the 3 per Cents. at the end of a year from the testator's death; in other words, the excess of income will be treated as capital (y). But it has been held that this principle is not to be extended to the case of a trustee making an unauthorised investment by which the tenant for life receives a larger income. Thus, where trustees without authority lent trust monies at interest at 5 per cent., it was held that the tenant for life was entitled to the whole interest, and that the remainderman had no right to insist that any part of such interest formed capital. The Master of the Rolls observed, that when trustees or executors commit a breach of trust by lending the money on some unauthorised investment, they have discharged their liability in favour of the *cestuis que trust* in remainder, when they have made good the capital and any increase which that capital may have

(x) *Robinson v. Robinson*, 1 De G. M. & G. 257, overruling *Watts v. Girdlestone*, 6 Beav. 188; *Ames v. Parkinson*, 7 Beav. 379. See also *Marsh v. Hunter*, 6 Mad. 295; *Shepherd v. Moulds*, 4 Hare, 500; *Rees v. Williams*, 1 De G. & Sm. 314. *Robinson v. Robinson* seems, at first sight, to have been disregarded in *Brown v. Gellatly*, 2 Ch. App. 751; but this is not really so,

if the decision in the latter case as to the unauthorised securities was confined to the rate of interest to be paid to the tenant for life during the first year from the testator's death.

(y) *Dimes v. Scott*, 4 Russ. 195. See also *Howe v. Lord Dartmouth*, 7 Ves. 137; *Mills v. Mills*, 7 Sim. 501.

received (z). But the distinction seems fine, and cannot, it is submitted, be confidently relied on.

When trustees have a discretion to invest in government or real securities, and they exercise such discretion by investing on a security of insufficient value, they are liable to replace the principal with 4 per cent. interest, but cannot be charged with its value in stock (a).

If the trustees are *authorised* to invest or change the investment with the *consent* of the tenant for life, neither party can be compelled to acquiesce in the desire of the other, but the voluntary concurrence of both parties is requisite to a valid exercise of the power (b). But in a case where the trustees were authorised *and required* to change the investments at the request of the tenant for life, the Court compelled the trustees to comply with the request of the tenant for life, that the existing securities should be changed (c).

Difference between trustees authorised or required to invest with consent.

A trustee or executor is not liable for loss arising from the failure of bankers with whom money has been deposited pending distribution or a permanent investment, unless such deposit has been made or allowed to remain without sufficient reason (d), and an executor placing goods in the hands of a tradesman to be disposed of in the ordinary way of business, is not liable for loss arising from such tradesman becoming bankrupt (e). On the other hand it would seem that a trustee is liable for a loss occasioned by the fraud of his solicitor (f).

Trustees not liable for failure of bankers,

or of tradesman.

Trustee liable for fraud by his solicitor.

## VII. Disclaimer.

If a person appointed a trustee by deed or will is desirous of disclaiming the trust, and has done no act which would amount to an acceptance of it, he should execute a deed of disclaimer in proper form, bearing in mind that any form is objectionable which *affects* to

Disclaimer.

(z) Stroud v. Gwyer, 28 Beav. 130, 141. But see Baynard v. Woolley, 20 Beav. 583.

(a) Ames v. Parkinson, 7 Beav. 379.

(b) Lee v. Young, 2 Y. & C. 532.

(c) Beauclerk v. Ashburnham, 8

Beav. 322. And see accordingly, Cadogan v. Essex, 2 Drew. 227.

(d) Johnson v. Newton, 11 Hare, 160.

(e) Job v. Job, L. R. 6 C. D. 562.

(f) Bostock v. Floyer, L. R. 1 Eq. 26; Sutton v. Wilders, L. R. 12 Eq. 373.

convey and release property the trusts whereof he wholly disclaims (*g*).

What is acceptance of a trust.

What will amount to the acceptance of a trust must depend upon the acts or conduct of the trustee. For instance, the signature of the deed by which the trust is created, or any interference in the management of the estate under the trusts of the deed, would be regarded as an acceptance (*h*).

Probate acceptance of trust.

There can be no disclaimer of a trust which has once been accepted; and where personalty is bequeathed to executors as trustees the probate of the will amounts to an acceptance of the trust (*i*). But on the other hand, a renunciation of the executorship is not of itself a disclaimer of the trusts.

Revocation of one office does not revoke other.

When a person is appointed trustee and executor, and by a codicil the testator revokes the appointment of that person as executor, this does not amount to a revocation of the trusteeship (*k*).

Position of heir of surviving trustee who has not disclaimed.

The fact of a surviving trustee dying without acting under the instrument does not prevent the legal estate in the trust property from vesting in him, and devolving on his heirs or devisees, unless he actually disclaimed in his lifetime (*l*); but in a recent case, *Jessel, M. R.*, was of opinion, though it was not necessary to decide the point, that a disclaimer might be presumed from a trustee, who was also an executor, having renounced probate and lived for three years without acting in the trusts of the real estate (*m*).

Disclaimer by parol when good.

A disclaimer of a gift or trust of copyholds may be made by parol (*n*). So also a parol disclaimer of a gift or trust of leaseholds (*o*), or of chattels personal (*p*), is good; and there are authorities in favour of the position, that a gift or trust of freeholds may be disclaimed by parol (*q*). In *Townson v. Tickell* (*r*), *Holroyd, J.*,

(*g*) *Nicholson v. Wordsworth*, 2 Swan. 365; *Urch v. Walker*, 3 M. & Cr. 710.

(*h*) *Hill's Trustees*, 194.

(*i*) *Mucklow v. Fuller*, Jac. 198.

(*k*) *Graham v. Graham*, 22 L. J. Ch. 937.

(*l*) *King v. Phillips*, 22 L. J. Ch. 422.

(*m*) *Re Gordon*, L. R. 6 C. D. 531.

(*n*) *Rex v. Wilson*, 5 M. & R. 140.

(*o*) *Smith v. Wheeler* 1 Vent. 188.

(*p*) *Hill's Trustees*, 203.

(*q*) *Bonifaut v. Greenfield*, Cro. Eliz. 80.

(*r*) 3 B. & Ald. 39.

said that it seemed to him, on the reason of the thing, and the authority of *Bonifaut v. Greenfield*, that the disclaimer of freeholds need not be either by deed or matter of record (s), but it is always prudent to have a deed.

When the name of a party appears in an instrument as a trustee, and he is therefore made a defendant, but he asserts by his answer that he had never accepted the trust or acted, he is entitled to his costs as between party and party (t).

When trustee who has not acted is entitled to costs.

As to the consequences of a disclaimer by a trustee, Mr. Hill observes: "Where the person who is appointed trustee makes a proper disclaimer, the effect is that all parties are placed precisely in the same situation relatively to the trust property as if the disclaiming party had not been named in the trust instrument, whether it be a deed or will. Therefore where a sole trustee or all the trustees disclaim a devise in trust, the legal estate will vest in the heir of the devisor, and if the person disclaiming be one of two or more trustees, the entire estate is vested in the other trustee or trustees. Whenever the disclaimer is made it will have relation back to the time of the gift. Where one of two or more trustees disclaims, the remaining trustees or trustee will take not only the entire legal estate, but also all the powers and authorities vested in the trustees as such, and which are requisite for the administration of the trust" (u). The disclaimer must be *absolute*, and if valid is irrevocable.

Consequences of disclaimer.

### VIII. *The appointment of new trustees and the construction of powers for this purpose.*

If a trustee accepts the trust he will not be allowed, in the absence of a power, to retire from his office through mere caprice, but if circumstances arise in the administration of the trust which alter the nature of his duties, he is justified in applying to the Court for

Trustee, whether he may retire from office.

(s) See also *Smyth v. Smyth*, 6 B. & C. 112; but see in *Re Ellison's Trusts*, 2 Jur. N. S. 62, in which case Sir W. P. Wood, V.-C., doubted whether a parol disclaimer by a

trustee would divest an estate in freeholds out of him.

(t) *Heap v. Jones*, 5 W. Rep. 106.

(u) *Hill's Trustees*, 205.

the appointment of a new trustee, and will be allowed the costs of the suit out of the trust property (*x*). The executor of a deceased sole trustee may decline to act as trustee, and will be entitled to the costs of any proceedings for the appointment of a new trustee (*y*).

Where  
original  
number of  
trustees  
must be  
adhered to.

The question often arises whether on the appointment of new trustees it is necessary to adhere to the original number. The result of the authorities seems to be that it is not, unless such an intention can be gathered from the particular language of the instrument. Thus appointments of two in the place of three or four, and of three in the place of four or five have been upheld (*z*), but it would not be safe for the survivor of several trustees to retire and appoint one new trustee only (*a*), and an increase of the numbers has in some cases been allowed (*b*).

A power to a surviving or continuing trustee to appoint a new trustee in the place of a trustee dying, &c., will apply to the case of a person dying in the lifetime of the testator (*c*). And it has been held that the payment into Court of the trust fund by the trustee is a retiring of such trustee from the trust, and authorises the appointment of a new trustee in his place under a power for that purpose, to arise in the event of a trustee refusing or declining to act (*d*).

There seems no reasonable doubt that the words "refusing or declining" would apply to the case of a trustee once acting and then retiring or declining further to act (*e*).

A retiring trustee cannot appoint a new trustee under a power for this purpose given to a surviving or continuing trustee (*f*). But where there was a power

(*x*) *Forshaw v. Higginson*, 20 Beav. 485; *Gardiner v. Downes*, 22 Beav. 395.

(*y*) *Legg v. Mackrell*, 2 De G. F. & J. 551.

(*z*) *Fagg's Trust*, 19 L. J. Ch. 175. *In re Poole Bathurst's estate*, 2 Sm. & Giff. 172; *Miller v. Pridden*, 1 De G. M. & G. 335; *Emmet v. Clarke*, 3 Giff. 32; *Reid v. Reid*, 30 Beav. 388; *Cunningham's Contract & Wilson W. N.* 1877, p. 258.

(*a*) *Hulme v. Hulme*, 2 M. & K. 682; *Ex parte Davis*, 2 Y. & C. 468.

(*b*) *D'Almaine v. Anderson*, cited

in *Lewin on Trusts*, 428; see also *Meinertzhagen v. Davis*, 1 Coll. 335; *Sands v. Nugee*, 8 Sim. 130.

(*c*) *Ex parte Hadley*, 5 De G. & S. 67.

(*d*) *In re Williams' Settlement*, 4 K. & J. 87.

(*e*) See *Lewin on Trusts*, 426; *Travis v. Illingworth*, 2 Dr. & Sm. 346.

(*f*) *Stones v. Rowton*, 17 Beav. 308; *Nicholson v. Smith*, 3 Jur. N. S. 313; *Earl of Lonsdale v. Beckett*, 4 De G. & S. 73; *Travis v. Illingworth*, 2 D. & S. 344. See also *Sharp v. Sharp*, 2 B. Ald. 415.

for the surviving or continuing *or other* trustee or trustees to appoint new trustees in the place of a trustee or trustees dying or desiring to be discharged, or refusing or declining to act, it was held that an appointment of four new trustees by the last survivor of four trustees who was desirous of being discharged, was good (g).

If, therefore, the power of appointing new trustees in the place of trustees desiring to be discharged, &c., is limited to the continuing or surviving trustees or trustee, and both the trustees for the time being wish to retire, the following course should be adopted :—One of the two trustees should first retire, and a new trustee be appointed in his place by the other, as the continuing trustee. The other trustee should then retire, and the newly appointed trustee under the first appointment should, as the then continuing trustee, appoint a trustee in the place of the last retiring trustee. If there is only one surviving trustee, and he wishes to retire, he should first appoint a new trustee in the place of the deceased trustee, and then the newly appointed trustee should appoint a second trustee in the place of the retiring trustee (h).

Plan to be adopted when both trustees or the only surviving trustee wish to retire.

A person beneficially interested and even the tenant for life under the settlement may be appointed a new trustee, unless the instrument shows an intention to the contrary (i).

Beneficiary may be a new trustee.

The rules which relate to powers generally must be observed in reference to a power for the appointment of new trustees, and such a power can only be exercised by the person to whom it is expressly given by the instrument ; so that the assignee or devisee of a surviving or continuing trustee cannot appoint new trustees under a power limited to the surviving or continuing trustee, his executors or administrators only ; and if the power is to be only exercised with consent, the power would be extinguished by the death of the consenting party.

Rules relating to powers generally applicable to this power.

So also, if a tenant for life in whom a power to

When power vested in

(g) Lord Camoys v. Best, 19 Beav. 414.

(i) Forster v. Abraham, L. R. 17 Eq. 351.

(h) See Hill's Trustees, 154.

tenant for  
life is extin-  
guished.

appoint new trustees is vested, aliens or mortgages his life estate, the power could not afterwards be exercised without the consent of the alienee or mortgagee, unless the right to do so is expressly reserved (*k*).

Trustee  
becomes  
*unfit* by  
bankruptcy.

A power to appoint a new trustee in the place of a person *becoming unfit* to act, applies to the case of a trustee becoming bankrupt (*l*) ; but bankruptcy is not a ground for an appointment under a power to appoint a new trustee in the place of a trustee *becoming incapable* to act. It is, however, a sufficient ground for his removal from the office by the Court (*m*).

Expense of  
appoint-  
ments.

The expense of the appointment of new trustees must generally be borne by the trust estate.

Application  
to Court  
for appoint-  
ment of new  
trustees.

If the instrument contains no power to appoint new trustees in the event of death, incapacity, or otherwise, and the power provided by the 27th section of the 23 & 24 Vict. c. 145, does not apply to the instrument in question, and the concurrence of all the *cestuis que trust* cannot be obtained, the only means of procuring the appointment of a new trustee is by applying to the Court under the Trustee Act, 1850 (*n*), which in effect enables the Court to appoint new trustees, whenever it is found inexpedient, difficult, or impracticable to make such appointment otherwise, and the Court is also empowered to make orders vesting any lands subject to the trust in the new trustees.

When  
powers can  
be exercised  
by trustees  
appointed  
by the  
Court.

A power given to the trustees *nominatim*, and the survivors and survivor of them, and the executors or administrators of the survivor, could not before the Act 23 & 24 Vict. c. 145, be exercised by trustees appointed by the Court (*o*). But it was otherwise if the power was conferred upon persons in their character of trustees, and thus annexed to the office (*p*).

Power to  
appoint new  
trustees  
conferred  
by 23 & 24  
Vict. c. 145,  
s. 27.

The 23 & 24 Vict. c. 145, s. 27, contains a general provision (applicable to instruments executed after the 28th Aug., 1860, so far as any such instrument does not negative or vary the provisions of the Act), enabling the appointment of new trustees in the case of any

(*k*) Lewin on Trusts, 433.

(*l*) *In re Roche*, 2 Dr. & W. 187.

(*m*) *Bainbrigg v. Blair*, 1 Beav. 495.

(*n*) 13 & 14 Vict. c. 60.

(*o*) *Newman v. Warner*, 1 Sim N. S. 457.

(*p*) *Byam v. Byam*, 19 Beav. 58. See also *Brassey v. Chalmers*, 4 De G. M. & G. 528.

trustee dying or desiring to be discharged from, or refusing or becoming unfit or incapable to act in, the trusts, the power being vested in the person or persons nominated for that purpose by the deed, will, or other instrument creating the trust (if any); or if there be no such person, or no such person able and willing to act, then in the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator of the last surviving and continuing trustee, or the last retiring trustee (q).

The Act also provides in the same section that every trustee to be appointed under the statutory power, and also every trustee appointed by the Court, *either before or after the passing of the Act*, shall have the same powers, and in all respects act as if he had been originally nominated a trustee by the instrument creating the trust.

### IX. *The Provisions of the Trustee Relief Acts.*

Several Acts have been passed during the present reign for the relief of trustees.

The 10 & 11 Vict. c. 96, after reciting that it is expedient to provide means for better securing trust funds, and for relieving trustees from the responsibility of administering trust funds in cases where they are desirous of being so relieved, enables trustees, executors, administrators, or other persons having trust monies in their hands, or having any annuities or stocks standing in their name in the books of the Governor and Company of the Bank of England, or of the East India Company, or South Sea Company, or any government or parliamentary securities standing in their names, or in the names of any deceased persons of whom they shall be personal representatives, to pay, transfer, or deposit the same into or in the Court of Chancery, and thus discharge themselves from their trust (r).

It was formerly considered that a trustee having funds in his hands was at liberty under any circumstances to pay them into Court, under the Trustee

10 & 11 Vict.  
c. 96.

Cases in  
which  
trustees are  
justified in  
paying  
money, &c.,  
into Court.

(q) See the Act set out *verbatim* in Appendix.

(r) See also 12 & 13 Vict. c. 74.



Relief Acts, if he was so minded (s). This doctrine has, however, been modified by subsequent decisions, the result of which may be thus stated, viz., that, where there is any *bond fide* question as to the party entitled to the fund, the trustee is not bound to take upon himself the responsibility of deciding such question, and if he pays the fund into Court will be entitled to the costs of such payment, and also to his costs of the application for obtaining it out of Court (t); but if a trustee pays the fund into Court, having no doubt as to the title of the persons claiming it, or under other circumstances which in the opinion of the Court render such a course unnecessary and vexatious, he will not only be refused his own costs of the application by the party entitled for the payment of the fund out of Court, but will also be decreed to pay the costs of the petitioner (u); nor will a trustee be justified in paying money into Court under the Act after notice of the intention of the *cestui que trust* to file a bill to have the accounts taken (v).

It has been decided that a trustee having in his hands money belonging absolutely to a married woman is not bound to pay it to her husband upon the joint request of both, but may, if he thinks fit, pay it into Court under this Act, so as to give her the opportunity of asserting her equity to a settlement (x).

Purchase-money may be paid into Court when trustees have no power to give discharge.

If a sale is made by trustees who have no power to give valid discharges, the difficulties arising from this imperfection of the instrument as to the payment of the purchase-money, may be removed by paying the money into Court under the provisions of this Act (y); and there can be no doubt that the surplus proceeds of a sale under a power in the hands of a mortgagee are held on a trust within the meaning of the statute (z). But the owner of land charged with a legacy is not

(s) *In re Croyden's Trust*, 14 Jur. 54.

(t) *In re Headington's Trust*, 27 L. J. Ch. 175; *Re Wylly's Trust*, 28 Beav. 458; *Re Bendyshe*, 26 L. J. Ch. 814; *Re Jones*, 3 Drew. 679.

(u) *Re Woodburn's Trust*, 1 De G. & J. 333; *Re Cater's Trust*, 25 Beav. 361; *Re Knight's Trust*, 27

Beav. 45; see also *In re Fagg's Trust*, 19 L. J. Ch. 175; *Foligno's Trust*, 32 Beav. 131; *Leake's Trust*, *ib.* 135.

(v) *In re Waring*, 16 Jur. 252.

(x) *Re Swan*, 2 H & M. 34.

(y) *Cox v. Cox*, 1 Kay & J. 251.

(z) *Darling's Admin. of Trust Funds*, 10.

entitled to pay the amount of the charge into Court under the Act (a).

The payment of a trust fund into Court, does not, of course, protect the trustees from responsibility in respect of prior breaches of trust (b). Prior breaches of trust.

By the 22 & 23 Vict. c. 35, s. 30, trustees, executors, and administrators are enabled to obtain the opinion, advice, or direction of the Court on any question respecting the management or administration of the trust property, or the assets of the testator or intestate. The practice of the Court under this Act is to advise trustees on questions relating to the management of the trust property, but not to decide questions of construction (c). 22 & 23 Vict. c. 35, s. 30.

In cases where the trust estate does not exceed in amount or value 500*l.*, all proceedings under the Trustee Relief Acts, or under the Trustee Acts, may be in the County Court under the Act 28 & 29 Vict. c. 99.

### X. *Miscellaneous points relating to trustees.*

It is the duty of a bare trustee, on the request of the person who may be entitled to the entire equitable interest, to convey the legal estate to him, and such trustee would certainly be compelled to pay the costs of any suit which might be instituted against him for this purpose in consequence of his refusal to execute such a conveyance (d). The equitable interest of the beneficial owner, however, must be certain, absolute, and immediate, to enable him to call for the legal estate, and if there remains in the trustee any purpose unperformed for which the legal estate is vested in him, he is entitled to refuse to execute any conveyance until those purposes are fully performed. As a trustee holds the legal estate for all persons who are interested in the equitable estate, he must be careful (in dealing with the legal estate) to regard all such interests so far as he obtains notice of the equities respectively Duty of bare trustee

Where, by reason of the disability of a trustee, or Conveyance of legal

(a) *In re Buckley's Trusts*, 17 Drew. & Sm. 401; *In re Mary Beav.* 110. Hooper, 29 Beav. 656.

(b) *Attorney-General v. Alford*, 4 De G. M. & G. 843. (d) *Willis v. Hiscox*, 4 My. & Cr. 197; *Burtinshaw v. Martin*, 5 Jur.

(c) *Re Lorenz's Settlement*, 1 N. S. 647.

estate where  
trustee  
disabled.

other circumstances, a conveyance of a legal estate outstanding in a trustee cannot be obtained, it is necessary to resort to the Chancery division of the High Court of Justice under the Trustee Acts for a vesting order, or for an order authorising some person to convey in the place of the trustee under disability, &c. (e).

Provisions  
of Trustee  
Act as to  
vesting  
orders.

(e) By the Trustee Act, 1850, the Lord Chancellor is empowered to make such order as he may think fit for vesting and releasing lands held upon trust or by way of mortgage in the following cases :

When any lunatic or person of unsound mind is seised or possessed of lands on any trust or by way of mortgage (sect. 3), or is entitled to any contingent right in such lands (sect. 4).

When any infant is seised or possessed of any such lands (sect. 7) (see *In re Howard*, 21 L. J. (Ch.) 437 ; *In re Williams*, 5 De G. & S. 515 ; *Ex parte Grieve*, 5 De G. & S. 436), or is entitled to any contingent right in such land (sect. 8).

When any person solely seised or possessed of any lands upon any trust is out of the jurisdiction of the Court of Chancery, or cannot be found (sect. 9).

When any person or persons shall be seised or possessed of any lands jointly with a person out of the jurisdiction of the Court of Chancery, or who cannot be found (sect. 10).

When any person solely entitled to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found (sect. 11).

When any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found (sect. 12).

Trustee Act  
Extension  
Act

When there shall have been two or more persons jointly seised or possessed of any lands upon any trust, and it shall be uncertain which of such trustees was the survivor (sect. 13).

When any one or more person or persons shall have been seised or possessed of any lands upon any trust, and it shall not be known, as to the trustee last known to have been seised or possessed, whether he be living or dead (sect. 14).

When any person seised of any lands upon any trust shall have died intestate as to such lands without an heir, or shall have died, and it shall not be known who is his heir or devisee (sect. 15).

When any lands are subject to a contingent right in an unborn person or class of unborn persons, who upon coming into existence would in respect thereof have become seised or possessed of such lands upon any trust (sect. 16).

When any person jointly or solely entitled to lands, or to a contingent right in lands, upon any trust, shall after a demand by a person entitled to require a conveyance or assignment of such lands, or a duly authorised agent, have stated in writing that he will not convey or assign the same, or shall neglect or refuse to convey or assign such lands for twenty-eight days next after a proper deed for conveying the same shall have been tendered to him by any person entitled to require the same, or by such agent (sects. 17, 18).

The 28th sect. declares what shall be the effect of an order vesting copyholds or appointing any person to convey copyholds.

And by the Trustee Act Extension Act (15 & 16 Vict. c. 55), the Chancellor is empowered to make such an order when any person shall be jointly or solely seised or possessed of any lands, or entitled

If the trust estate does not exceed in amount or value 500*l.*, the application may be made to the County Court under the Act 28 & 29 Vict. c. 99, sect. 1.

It is provided by a clause in the Land Transfer Act, 1875 (*f*), that upon the death of a bare trustee intestate as to any corporeal or incorporeal hereditament, of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real, in the legal personal representative from time to time of such trustee, but this clause is not to apply to lands registered under the Act (*g*).

On death of a bare trustee, fee simple devolves on his personal representative.

The above provision obviates the necessity for an application to the Court for a vesting order where a trustee has died leaving an infant heir, in those cases to which the enactment applies.

The meaning of the term "bare trustee" is discussed in a former part of this dissertation.

Meaning of term "bare trustee."

No lands, &c., so far as they are vested in any person upon any trust, or by way of mortgage, will escheat or be forfeited to her Majesty, or to any corporation, lord or lady of a manor, or other person, by reason of the attainder or conviction for any offence of the trustee or mortgagee (*h*).

No forfeiture on attainder of trustee.

The presumption of the re-conveyance of a legal estate depends on various circumstances. As between the trustee and *cestui que trust* no length of time is a ground for such presumption, but there may have been dealings on the part of the equitable owner inconsistent with the supposition of the legal estate being outstanding,—as where the property has been sold, mortgaged, and settled from time to time without any notice having been taken on such occasions of the outstanding legal estate, or where the property has been dealt with in

Presumption of re-conveyance.

to any contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly authorised agent of such last-mentioned person, requiring such trustee to convey or assign the same, or to release such contingent right (sect. 2).

Shelford's Real Property Statutes, pp. 605 to 635, and Morgan's Chancery Acts and Orders.

(*f*) Sect. 45.

(*g*) It seems a clumsy mode of legislation to insert in an Act to establish a land registry a clause applicable exclusively to unregistered land.

(*h*) 46th sect. of Trustee Act, 1850; see also 4 & 5 Wm. 4, c. 23, s. 3.

For the cases decided on the construction of the Trustee Acts, see

such a manner as to lead to the inference that the legal estate must have been at the time in the beneficial owner (*i*), or where the legal estate is directed to be conveyed to a particular person at a given time (*k*), or is conveyed to trustees for a particular purpose (*l*), and they are directed to convey to the *cestui que trust* when those purposes are satisfied, and a long time has elapsed since the trustees *ought* to have conveyed the legal estate pursuant to such direction, &c., &c.,—and in such cases it will have to be considered whether there is sufficient ground for such presumption (*m*). It is said that if before a jury it would be the duty of a judge to give a clear direction in favour of the fact of conveyance, then it is to be considered as without reasonable doubt; but if it would be the duty of a judge to leave it to the jury to pronounce upon the effect of the evidence, then it is too doubtful to conclude a purchaser (*n*). In *Cotterell v. Hughes* (*o*), a term was assigned to attend the inheritance in 1773. In 1778 the estate was limited in strict settlement, and in 1813 the estate was again limited in strict settlement, but in neither of these settlements was any notice taken of the outstanding term. In 1840 the estate was sold, and on this occasion the term was assigned to attend the inheritance for the purchaser, and it was held that the circumstances of the omission of all mention of this term in the two settlements would not justify the Court in presuming a surrender.

The presumption of the surrender of a term which is not stated as a fact in the special case, must be made by a jury and not by the Court (*p*).

Right to  
the possession  
of title  
deeds,

The right to the possession of the title deeds depends on the situation of the legal estate, and follows the legal ownership; and this rule is equally applicable to personal and real estate. If, therefore, the legal interest in an estate under a settlement is vested in trustees in trust to pay the rents and profits to a tenant for life,

(*i*) *Noel v. Bewley*, 3 Sim. 114; *Emery v. Grocock*, 6 Mad. 54.

(*k*) *England v. Slade*, 4 T. R. 682.

(*l*) *Hillary v. Waller*, 12 Ves. 239.

(*m*) *Hill's Tr.* 236; *Matthias v.*

*Evans*, 29 L. T. 226.

(*n*) *Emery v. Grocock*, *ubi supra*; *Sug. V. & P.*, 13th ed., 331.

(*o*) 15 C. B. 532.

(*p*) *Cotterell v. Hughes*, *ubi supra*.

and after his death in trust for other persons, they are, as a general rule, entitled to retain the custody of the deeds (*q*). The *cestui que trust*, however, has a right to inspect and take copies of the deeds at any time (*r*). But the tenant for life has a right to the custody of the deeds, if the legal as well as the equitable estate is vested in him (*s*), unless he has been guilty of misconduct so that the safety of the deeds is endangered, or there is a pending suit relating to the property, and it is more convenient for the purposes of the suit that they shall be in Court (*t*). Any person entitled to a *vested* remainder may require the tenant for life to produce the title deeds for the remainderman's inspection, in order to enable him to dispose of, or otherwise deal with, the property (*u*). But it seems that this right does not extend to a person entitled to a contingent remainder (*x*).

The trustee of a bare legal estate will be compelled in equity to deliver the custody of the title deeds to his *cestui que trust* (*y*).

If a trustee renews a lease, the renewed lease will enure for the benefit of the trust (*z*), and it makes no difference that the lease has not usually been renewed (*a*), or that the old lease had expired (*b*), or that the renewal was for a different term or at a different rent, or that the lessee has purchased the reversion from the landlord (*c*).

It is an established rule that a trustee, executor, or

Renewal of  
lease by  
trustee.

Trustee  
cannot

(*q*) *Garner v. Hannynghton*, 22 Beav. 630. But see *Lady Langdale v. Briggs*, 8 De G. M. & G. 416, where the Court directed the deeds to be given into the possession of a tenant for life of bequeathed leaseholds, upon his giving reasonable security for protecting the interests of the persons entitled in remainder, although the executor opposed the application.

(*r*) *Ex parte Holsworth*, 4 Bing. N. C. 386; 7 L. J. (N. S.) C. P. 225.

(*s*) See *Doe v. Passingham*, 6 B. & C. 305; *Barclay v. Collett*, 4 Bing. N. C. 669; 7 L. J. (N. S.) C. P. 235; *Bowles v. Stewart*, 1 Sch. & Lef. 223; *Garner v. Hannynghton*,

*ubi supra*.

(*t*) *Ivie v. Ivie*, 1 Atk. 429; *Warren v. Rudall*, 1 J. & H. 1; *Leathes v. Leathes*, L. R. 5 C. D. 221; *Stamford v. Roberts*, L. R. 6 Ch. 307.

(*u*) *Davis v. Earl of Dysart*, 20 Beav. 405; *Pennell v. Earl of Dysart*, 27 Beav. 542.

(*x*) *Noel v. Ward*, 1 Mad. 322; *Ivie v. Ivie*, 1 Atk. 429.

(*y*) *Hill's Tr.* 259.

(*z*) *Edwards v. Lewis*, 3 Atk. 538.

(*a*) *Killick v. Flexney*, 4 B. C. C. 161.

(*b*) *Edwards v. Lewis*, *ubi supra*; *James v. Dean*, 11 Ves. 383.

(*c*) *Giddings v. Giddings*, 3 Russ. 241.

charge for  
professional  
services.

administrator shall have no allowance for his care and trouble (*d*), and consequently a trustee who is a solicitor is only entitled to be repaid costs out of pocket, and cannot charge the trust estate for his professional services (*e*). The rule equally applies where the trustee is a member of a firm of solicitors, and the business is done by the firm (*f*). In a case where one of a firm of solicitors acted in the defence of a suit for himself and his co-trustees, it was held that the trustees, as a body were entitled to their full costs, unless it could be shown that the amount of such costs was increased by the solicitor being joined in the defence with the other trustees (*g*). But the exception to the general rule allowed in the last named case will not be extended to the administration of an estate out of Court (*h*).

A mortgagee, in his mere character of mortgagee, is not a trustee, but if he enters into possession he becomes a trustee in respect of the rents and profits. So if a mortgagee has a power of sale, and executes it, he is a trustee of the surplus sale monies for the mortgagor, and he cannot charge him for his trouble in selling (*i*). Whether a solicitor mortgagee who acts for himself in a redemption suit is entitled to costs beyond those out of pocket, seems doubtful (*k*).

Rule not  
confined to  
solicitors.

The rule is not confined to solicitors. Thus, in a case where a mortgagee with a power of sale was a member of a firm of auctioneers, and the firm sold for him under the power, it was held the firm were not entitled to the auctioneer's commission (*l*).

Effect of  
clause  
authorising  
trustee to  
charge for  
professional  
services.

If the settlor or testator expressly authorises the trustee to retain his professional costs, he will be allowed to charge for everything which, if he had not been a trustee, he would have been justified in employing a

(*d*) Robinson v. Pett, 3 P. Wms. 248.

(*e*) Moore v. Frowd, 3 M. & C. 45; Pollard v. Doyle, 1 Drew & Sm. 319.

(*f*) Christophers v. White, 10 Beav. 523; Lincoln v. Windsor, 9 Hare, 158; Broughton v. Broughton, 2 Sm. & Gif. 422; S. C. 5 De G. M. & G. 160.

(*g*) Cradock v. Piper, 1 Mac. & G. 664.

(*h*) Lincoln v. Windsor, *ubi supra*.

(*i*) Matthison v. Clarke, 3 Drew. 3.

(*k*) See Price v. M'Beth, 33 L. J. Ch. 460; Slater v. Cottam, 29 L. T. 309.

(*l*) Matthison v. Clarke, 3 Drew. 3; see Douglas v. Archbutt, 2 De G. & J. 148.

solicitor to do ; but he will not be allowed his charges for things which an executor or trustee ought to do without the intervention of a solicitor, such as for attendances to pay premiums on policies, attendances at the Bank to make transfers, attendances on proctors, auctioneers, legatees, and creditors (*m*).

(*m*) *Harbin v. Darby*, 28 Beav. 325.



## HUSBAND AND WIFE.<sup>(a)</sup>

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It is proposed in this Dissertation to consider—  
 I. The interest of the husband in his wife's real estate, chattels real, chattels personal, choses in action, and reversionary interests in personalty. II. The wife's equity to a settlement. III. Trusts for the separate use of a married woman either with or without a restraint on anticipation. IV. To what extent the wife's separate estate is liable to her general engagements. V. The effect of separation or desertion as to the wife's power to bind the husband for necessities, and as to her property and earnings.

*I. The interest of the husband in his wife's real estate, chattels real, choses in action, chattels personal, and reversionary interests in personalty.*

Husband's  
interest in  
his wife's  
freeholds.

The act of marriage confers on the husband an estate during the joint lives of himself and his wife in all freehold and copyhold property belonging to the wife at the time of the marriage, or subsequently acquired by her during the coverture, as well legal as equitable, and as well corporeal as incorporeal, except property which, under the 8th section of the Married Women's Property Act, 1870 (*b*), or otherwise, is held for her separate use. The husband is also entitled, in case he survives the wife, and there has been issue of the

(a) This subject has been to some extent anticipated in the 1st vol., as to the disabilities of married women

in reference to the sale of land and as to dower.

(b) 33 & 34 Vict. c. 93.

marriage, to an estate during his life, called an estate by the curtesy, in any freehold property belonging to his wife, for any estate of inheritance descendible to such issue.

There is curtesy of land held by the wife in coparcenary, or in common, but not of land held in joint tenancy. There is no curtesy in respect of a reversion or remainder, unless the estate falls into possession during the coverture (*c*). Where contingent remainders intervene between a limitation to a wife for life and a reversion in her in fee, the right of curtesy exists until the contingency happens (*d*). There is also curtesy out of an equity of redemption (*e*), and out of money directed to be laid out in land (*f*), and out of a trust estate (*g*). The question whether the right to curtesy attaches when the estate is limited to the wife for her separate use may now be considered as settled in favour of the husband when the wife has made no alienation, but she may by deed or will defeat the curtesy (*h*). The husband is entitled to curtesy out of land of which the wife is tenant in tail, provided that a child is born capable of taking under the entail, although the wife may eventually die without issue. The husband is also entitled to curtesy out of lands in which his wife has an estate of inheritance subject to an executory limitation over, provided that a child is born, and the wife's estate is such as, notwithstanding the executory limitation, might have descended to such child. Thus, in a case where an estate was devised to a woman in fee, with an executory limitation over in case she should die under twenty-one and without leaving issue; the devisee had a child, the child died, and then the mother died under twenty-one, and it was held that the husband was tenant by the curtesy (*i*). But where there was a devise to A. in fee, and if she died leaving issue, then to such issue; it was held that

On what  
property  
curtesy  
attaches.

(*c*) Co. Litt. 29.

(*d*) Boothby v. Vernon, 9 Mod. 147.

(*e*) Casborne v. Scarfe, 1 Atk. 603.

(*f*) Cunningham v. Moody, 1 Ves. Sen. 174.

(*g*) Watts v. Ball, 1 P. Wms. 108.

(*h*) Cooper v. Macdonald, L. R. 7 C. D. 289, and cases there cited.

(*i*) Buckworth v. Thirkell, 3 Bos. & Pull. 652, note; see also Moody v. King, 2 Bing. 447.

as the issue took as purchasers, and could not have taken by descent, there was no curtesy (*j*).

There is no curtesy in respect of copyholds except by special custom (*k*).

Husband's  
interest in  
chattels real  
of wife.

With respect to the chattels real of the wife (not held for her separate use under the Married Women's Property Act, or otherwise), the husband is entitled to the rents and profits during the joint lives, and he has an absolute power of disposing of them by act *inter vivos*, and this power extends to reversionary and contingent interests, unless the interest is of such a nature that it cannot by possibility vest in the wife in possession during the coverture, and a voluntary assignment or settlement by the husband of the wife's chattels real will be as effectual as an assignment for value in defeating the right of the wife (*l*); but so far as this power is not exercised by a complete act during the coverture, they go to the survivor without administration.

Chattels  
personal of  
wife.

As to the *chattels personal* of the wife, not held for her separate use under the Act or otherwise, they become the property of the husband, so far as he obtains possession of them during the coverture. It must, however, be borne in mind that as an exception to this rule the paraphernalia of the wife, such as ornaments suitable to her condition in life, or pearls and jewels which she usually or sometimes wears, belong to her, although she has no power to dispose of them or give them away. They are liable, however, to the husband's debts, and he may also dispose of them by an act *inter vivos*, but not by will (*m*).

Husband's  
interest in  
his wife's  
*choses in*  
*action*.

With respect to the *choses in action* of the wife not belonging to her for her separate use under the Act or otherwise,—which term comprises debts owing to her, arrears of rent, legacies, trust funds, residuary personal estate, money in the funds, and other property recoverable by action or suit,—the husband acquires an absolute interest in the same, so far as they are reduced by him into possession during the coverture, but not other-

(*j*) *Barker v. Barker*, 2 Sim. 249 ;  
see also *Sumner v. Partridge*, 2 Atk.  
47.

(*k*) *Gilb. Ten.* 288.

(*l*) *Supra*, vol. i.

(*m*) See *Bright's Husband and*  
*Wife*, vol. i., pp. 287, 288.

wise ; and an assignment for a valuable consideration of the wife's choses in action by the husband is void against the wife surviving, if the husband die before he or the assignee has reduced them into possession, although they could have been immediately reduced into possession, but from neglect or other causes they have been left outstanding (*n*).

A chose in action is considered to be reduced into possession by the husband when he receives a sum owing to his wife, or when a fund is transferred into his name, or when a fund or money belonging to the wife is transferred into the name of, or paid to, a third party at the request of the husband (*o*).

What amounts to a reduction into possession.

Where money is paid to the wife or her agent, it will be considered as reduced into possession, and becomes at once the husband's property (*p*) ; but where money was paid into the hands of a third party, to be appropriated to the use of a married woman, and he wrote to her informing her that he had it at her disposal, this was not considered a reduction into possession (*q*).

If the chose in action is recoverable at law, and the husband obtains a judgment in an action brought by him for the amount, and then sues out execution, and thus obtains the debt, this amounts to a reduction into possession ; but if the husband dies after judgment and before execution, the debt goes to the wife, and not to the husband's executor (*r*). It has been held in two early cases that the order or decree of a court of equity for *payment* of a fund to the husband is a reduction into possession (*s*). These decisions are justified by Mr. Eden, on the ground of there being an actual order for the payment to the husband ; and the transaction being thus completed is distinguishable from a judgment at law, where an ulterior step has to be taken by the party recovering to make it operate upon the thing recovered (*t*).

Effect of judgment at law or decree in equity.

(*n*) *Ellison v. Elwin*, 13 Sim. 309 ; 183 ; *Molony v. Kennedy*, 10 Sim. 254.  
*Ashby v. Ashby*, 1 Coll. 553 ; *Hutchings v. Smith*, 9 Sim. 137 ; *Michellmore v. Mudge*, 2 Gif. 183.

(*o*) See *Hansen v. Miller*, 14 Sim. 22 ; *Allday v. Fletcher*, 1 De G. & J. 82 ; *Hamilton v. Mills*, 29 Beav. 193.

(*p*) *Carne v. Brice*, 7 M. & W. 183 ; *Eden*, 508.

(*q*) *Fleet v. Perrins*, L. R. 4 Q. B. 500.

(*r*) *Bond v. Simmons*, 3 Atk. 20.

(*s*) *Heygate v. Annesley*, 3 Bro. C. C. 362 ; *Forbes v. Phipps*, 1 Eden, 502.

(*t*) Note to *Forbes v. Phipps*, 1 Eden, 508.

What is not  
a reduction  
into  
possession.

The receipt by the husband of interest on his wife's mortgage debts or other choses in action does not constitute a reduction into possession of the principal (*u*). Again, a payment of the fund into Court by the trustee is not of itself a reduction into possession (*v*), nor a transfer by executors of a fund belonging to a married woman into the names of other trustees for her benefit (*w*), nor a transfer of the fund into the wife's name (*x*), or into the joint names of husband and wife (*y*). In a case where the husband was executor and trustee, it was held that his possession in that character was not a reduction into possession of the wife's share of the residue so as to entitle his executor to it, as against the wife surviving (*z*).

Where the chose in action cannot fall into possession during the husband's life, it is impossible for him to assign it as against his wife surviving.

Chose in  
action  
which is  
recoverable  
at law

If the chose in action is immediately recoverable *at law*, it may be released by the husband, but he has no right to release an equitable chose in action (*a*).

Where a husband agreed with the executor that a legacy given to his wife should be set off against a sum of the same amount owing from him to the testator on his promissory note, and the husband and wife signed a *receipt* for the legacy, but it did not appear that the promissory note was given up, it was held that, the wife, having survived, was entitled to the legacy, no *release* having been given for it by the husband (*b*). But in a case where a married woman was entitled to a sum of money owing to her on a promissory note, and the husband agreed with the debtor that the promissory note should be cancelled, and that in consideration thereof the debtor should give his bond for the same amount to trustees nominated by the husband upon

(*u*) *Michelmores v. Mudge*, 2 Giff. 183; *Ex parte Norton*, 8 De G. M. & G. 258.

(*v*) *Macaulay v. Philips*, 4 Ves. 15.

(*w*) *Ryland v. Smith*, 1 My. & Cr. 53; see also *Rawlins v. Birkett*, 25 L. J. Ch. 837; *Topham v. Morecraft*, 4 Jur. N. S. 611; *Wall v. Tomlinson*, 16 Ves. 413; *Bourton v.*

*Williams*, L. R. 5 Ch. 655.

(*x*) *Wildman v. Wildman*, 9 Ves. 174.

(*y*) *Prole v. Soady*, L. R. 3 Ch. 220.

(*z*) *Baker v. Hall*, 12 Ves. 497.

(*a*) See 1 Bright's H. & W. ch. 6.

(*b*) *Harrison v. Andrews*, 13 Sim. 595.

the trusts of a post-nuptial settlement, and the debtor gave such bond accordingly, it was held that this transaction amounted to a reduction into possession, and that the right of the wife by survivorship was effectually barred (c).

So long as the interest of a wife in personal property is of a reversionary nature, it is incapable of being reduced into possession, and therefore cannot be affected by any act of the husband so as to bind the wife surviving; and where a wife has a present life interest in a fund, that portion of the life interest which will remain to her after her husband's death, if she survives him, is reversionary within the meaning of the rule, and cannot be disposed of by the husband (d). It has been sometimes attempted to evade this rule and to bring the reversionary interest of the wife into the possession and control of the husband by obtaining a surrender or release of the prior interest; but it has been held that such a scheme is ineffectual. Thus, where a fund in Court was subject to a trust for a husband for life, remainder to his wife for life, remainder to their son absolutely. The husband and son by deed surrendered and released their respective interests to the wife for the purpose of giving her a present absolute interest in the fund; a petition by the three for payment of the fund to the son was refused on the ground that a court of equity will not establish an equitable merger by analogy to law, where the effect would be to defeat its own rules and practice in the protection of married women from the marital control (e).

Reversionary interest of wife cannot be reduced into possession by release of prior interest.

The concurrence of the wife in any attempted dealings by the husband with her reversionary interests or other choses in action not reduced into possession is ineffectual (f), except in cases coming within the operation of the Acts 3 & 4 Wm. 4, c. 74, and 20 & 21 Vict. c. 57.

Concurrence of wife inoperative except under recent Acts.

It has been seen that under the former Act a married woman, with the concurrence of her husband, may, by

(c) *Burnham v. Bennett*, 2 Coll. C. C. 254.

(d) *Stiffe v. Everitt*, 1 My. & Cr. 37; see also *Bolito v. Kinniar*, 11 Jur. N. S. 556.

(e) *Whittle v. Henning*, 2 Ph. 731.

(f) *Purdew v. Jackson*, 1 Russ. 1.

3 & 4 Wm. 4, c. 74.

20 & 21 Vict.  
c. 57.

Act for  
enabling  
wives to  
dispose of  
reversionary  
interests in  
personalty.

deed acknowledged, dispose of any interest in money charged on land, or to arise from the sale of land, whether such interest is immediate or in reversion. By the latter Act (*g*), it is provided that after the 31st of December, 1857, it shall be lawful for every married woman by deed to dispose of every *future* or *reversionary* interest, whether vested or contingent, of such married woman, or her husband in her right, in any personal estate to which she shall be entitled *under any instrument made after the 31st of December, 1857* (except such interest in personal estate as may have been settled on her by any settlement, or agreement for a settlement, made on the occasion of her marriage), and also to release or extinguish any power which may be vested in her in regard to any such personal estate, as fully as if she were a *feme sole*, except that no such disposition, &c., shall be valid unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her and otherwise perfected, as to England and Wales in the manner prescribed for the acknowledgment of deeds by the Fines and Recoveries Act for England, and as to Ireland, in the manner prescribed for the acknowledgment of deeds by the Fines and Recoveries Act for Ireland; and it is provided that all the provisions in those Acts concerning the disposition of lands by married women, including the provisions for dispensing with the concurrence of their husbands in the cases in the said Acts mentioned, shall extend to their future or reversionary interests in and power over personal estate as fully as if such interests or powers were interests or powers over land (*h*). The Act does not extend to reversionary interests of the wife to which she may be entitled by virtue of any deed, will, or instrument by which she is restrained from alienating or affecting the same (*i*).

Married  
woman may  
disclaim.

The 8 & 9 Vict. c. 106, s. 7, empowers a married woman to disclaim by deed made conformably to the provisions of the Fines and Recoveries Act.

Husband's  
privilege  
where wife  
is executrix.

The husband being answerable for his wife's acts, she cannot undertake the office of executrix without his

(*g*) 20 & 21 Vict. c. 57.

(*h*) Sects. 1, 2, 4.

(*i*) Sect. 1.

consent, nor give discharges for payments made to her in this character. The husband in his marital right is entitled to dispose of the personal estate vested in his wife as executrix, or to give receipts for or release debts due to the testator's estate (*j*); and he is liable for assets received or *devastavit*s committed by him or his wife during the coverture (*k*).

An important change has been made in the law of property as respects married women, by the Married Women's Property Act, 1870, above referred to (*l*). Under this Act a woman married after the 9th August, 1870, is entitled to hold for her separate use—1st, any personal property coming to her during her marriage as next of kin, or one of the next of kin, of an intestate (*m*); 2ndly, any sum of money not exceeding 200*l.*, coming to her during her marriage under any deed or will (*n*); and 3rdly, the rents and profits of any freehold, copyhold or customary-hold property descending upon her as heiress or co-heiress of an intestate (*n*).

Under this Act also, a woman married before or after the above date is entitled for her separate use to—1st, her wages and earnings acquired or gained by her after the above date in any employment, occupation, or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property (*o*); and 2ndly, any deposit made in her name, or any annuity granted to her by the Commissioners for Reduction of the National Debt under 10 Geo. IV. c. 24, or any of the Acts relating to savings' banks and post office savings' banks (*p*).

A married woman, or a woman about to be married, may also, by making application in the manner directed by the Act, become entitled for her sole use to the following kinds of property, belonging to her, *viz.*:

(*j*) Williams on Executors, pt. 3, bk. 1, ch. 4; *Thrustout v. Coppin*, 2 W. Bl. 800; 1 Bright's *Husb. & Wife*, 40.

(*k*) *Smith v. Smith*, 21 Beav. 385.

(*l*) 33 & 34 Vict. c. 93.

(*m*) Sect. 7.

(*n*) Sect. 8.

(*o*) Sect. 1.

(*p*) Sect. 2.

33 & 34 Vict. c. 93.

What property is by the Act made the wife's separate property.

Wages and earnings, &c., of married women protected.

Married woman may by application acquire separate property in stock in the



funds,  
shares of  
companies,  
&c.

1st, stock in the funds not being less than 20*l.* (*q*) ; 2ndly, fully paid-up shares, or debentures or debenture stock, or any stock to the holding of which no liability is attached, in any incorporated or joint-stock company (*r*) ; and 3rdly, shares, debentures, or any other interest in industrial, provident, friendly, benefit building, or loan society duly registered (*s*).

Married  
woman may  
effect policy  
of life  
assurance.

A married woman may also effect a policy of insurance on her own life or the life of her husband for her separate use (*t*), and a policy effected by a husband on his life, and expressed on the face of it to be for the benefit of his wife and children, or any of them, will enure accordingly, and the trust for the wife will be for her separate use (*t*).

Actions may  
be main-  
tained by  
married  
women.

The Act also provides that a married woman may maintain an action at law in her own name for any property directed by the Act to be her separate property, or for any property belonging to her before marriage, and which her husband shall by writing under his hand have agreed with her shall belong to her after marriage as her separate property (*u*).

Obser-  
vations on  
section 7.

It will be observed that under section 7 a married woman will be entitled to personal property coming to her by reason of an intestacy without any limit of amount, but if it comes to her under a deed or will, to the amount of 200*l.* only. It is difficult to conceive any reason for this distinction.

Operation  
of act as  
regards  
property  
which it  
makes the  
separate  
property  
of a married  
woman.

The effect of the Act as regards property which by virtue of it is made the separate property of a married woman, seems to be to attach to it all the equitable rights and remedies which, independently of the Act, belong to property given in trust for the separate use of a married woman, but not to alter the legal estate or interest in any such property, or to confer any legal rights or remedies in respect of it except those expressly mentioned in the Act. Thus, a married woman is authorized by sec. 3 to apply to the Bank of England in the prescribed manner to have stock transferred into her name to her separate account, and when this is done

(*q*) Sect. 3

(*r*) Sect. 4 ; see *Reg. v. Carnatic*  
*Ry. Comp.*, 8 L. R. Q. B., 299.

(*s*) Sect. 5.

(*t*) Sect. 10.

(*u*) Sect. 11.

she will be entitled to receive the dividends, and deal with it as if she were unmarried; but in the meantime, and until such a transfer is duly made, the bank is not bound to take notice of the fact that stock in her name, either solely or jointly with others, belongs to her for her separate use, and her husband's concurrence in the transfer is necessary (*v*). And as regards freehold or copyhold property descending on her as heiress, it is apprehended that sec. 8 gives her a right to receive the rents for her separate use during the coverture, but not to dispose of the fee-simple except with the formalities required by the Act 3 & 4 Wm. 4, c. 74.

## II.—*The wife's equity to a settlement.*

The choses in action of the wife may be paid or transferred to the husband, or to his assignee, or to trustees for his benefit (*w*), by the person in whose hands or name they are, at any time before proceedings have been instituted for a settlement; and if the chose in action is immediately recoverable at law, the court will not prevent the husband from recovering it accordingly; but where the husband has a title in equity only, the Court will in general oblige him to make a reasonable provision thereout for his wife and children (*x*). This right of the wife is called "her equity to a settlement."

Equity to a settlement what it is.

Wife's equity to a settlement.

The general rule is to settle one-half on the wife, and to pay the other half to the husband or his assignees; but the Court, in determining what will be a reasonable provision, will be guided in each case by all the circumstances, such as the amount of the fund, the provision that may have been already made upon the wife, the amount of property of the wife of which her husband may have previously possessed himself, the means which may be available for her support, &c., &c. Thus, in several cases where the fund was small, and the wife and children had no other means of support, the Court

Amount to be settled depends upon circumstances.

(*v*) *Howard v. Bank of England*,  
L. R. 19 Eq. 295.

(*w*) *Hansen v. Miller*, 8 Jur. 209.

(*x*) *Elibank v. Montolieu*, 5 Ves.  
737; *Vaughan v. Buck*, 1 Sim. N.  
S. 284.

has settled the whole fund (*y*). And in other cases, where ample provision has been already made for the wife and children, the Court has declined to order any settlement (*z*).

Release of  
equity to a  
settlement.

The wife is able, however, to waive her right to a settlement on examination in Court at any time before a settlement (although it may have been previously claimed by her (*a*)) is actually executed, but not so as to affect any interest which the children may have previously acquired under agreement (*b*). And now, under 20 & 21 Vict. c. 57, she is able by deed acknowledged under the Fines and Recoveries Act, with the concurrence of her husband to release or extinguish her right or equity to a settlement out of any personal estate to which she, or her husband in her right, may be entitled in possession under any instrument made after the 31st of December, 1857. It will be remarked that the Act makes no provision for enabling the wife to release her equity to a settlement out of personal estate derived under an *intestacy*.

Except in cases coming within the operation of the last-mentioned Act, the wife cannot deprive herself of her equity to a settlement otherwise than by examination in Court. Hence, a trustee having in his hands money belonging absolutely to a married woman, although he may safely pay it to the husband, is not bound to do so even at the wife's request, but may pay it into Court under the Trustee Relief Act, so as to enable the wife to assert her equity to a settlement (*c*).

Equity to a  
settlement  
does not  
attach to a  
reversionary  
interest

The wife's equity to a settlement is an obligation fastened by the Court not upon the property, but on the right to receive it, and it is only when the property comes to be payable or transferable, that the obligation

(*y*) *In re* Cutler, 14 Beav. 220; *In re* Kincaid, 1 Drew. 326; *Gent. v. Harris*, 10 Hare, 383; *Duncombe v. Greenacre*, 29 Beav. 578; see also *Coster v. Coster*, 9 Sim. 602; *Green v. Otte*, 1 S. & St. 250; *Gardner v. Marshall*, 14 Sim. 575; *Bagshaw v. Winter*, 5 De G. & Sm. 466; *Scott v. Spashett*, 21 L. J. Ch. 349; *Re Erskine's Trust*, 1 K. & J. 302; *Ward v. Yates*, 1 D. & S. 80; *Chap-*

*man v. Lamport*, 8 W. R. 466; *Smith v. Smith*, 3 Gif. 121.

(*z*) *Aguilar v. Aguilar*, 5 Madd. 414; *Spicer v. Spicer*, 24 Beav. 365; *Re Erskine's Trust*, 1 K. & J. 302.

(*a*) *Baldwin v. Baldwin*, 5 De G. & Sm. 319.

(*b*) *Ex parte Gardner*, 2 Ves. Sen 671.

(*c*) *Re Swan*, 2 H. & M. 34.

will be enforced. A settlement, therefore, cannot be claimed in respect of a reversionary interest so long as it remains reversionary (*d*).

The wife is entitled to this equity to a settlement, although she may be living separate from her husband (*e*).

Wife's right to a settlement not withstanding she may be living separate.

Again, this equity to a settlement exists as against her husband's assignees for a valuable consideration, and all other assignees, and also as against his creditors (*f*).

The wife has also an equity to a settlement in respect of her life interest in all her equitable property, whether it be freehold, or chattel real or personalty of any other description, as against the assignees in bankruptcy of the husband (*g*), or as against the husband himself, in the event of her being deserted by him (*h*), but no such equity exists as against particular assignees for value of such life interest (*i*).

Equity, how far it attaches to life interests.

If, previously to marriage, the husband makes a settlement on his wife in consideration of her fortune, he would be entitled to the absolute possession of the equitable personalty of which she was then possessed (*k*). And if the settlement is made in consideration of the future as well as the present fortune of the wife, the title of the husband in respect of all her property would be good as against the wife's right to a settlement (*l*). It is to be observed, however, that although such a purchase by the husband may entitle him to call for the whole of his wife's property, he must do so during the coverture, for if he should die in the lifetime of his wife without having reduced it into possession, it will survive to the wife (*m*).

If the wife dies before the husband, her children cannot

Cannot be enforced by children.

(*d*) *Osborn v. Morgan*, 9 Hare, 432; *Adams v. Bennett*, 23 L. T. 183.

(*e*) *Eedes v. Eedes*, 11 Sim. 569.

(*f*) *Johnson v. Johnson*, 1 Jac. & W. 476; *Scott v. Spashett*, 3 Mac. & Gor. 599; *Marshall v. Fowler*, 16 Beav. 249.

(*g*) *Lumb v. Milnes*, 5 Ves. 517; *Sturgis v. Champneys*, 5 M. & C. 97; *Barnes v. Robinson*, 9 Jur. N. S. 245.

(*h*) *Gilchrist v. Cator*, 1 De G. & Sm. 188; *In re Ford*, 33 L. J. Ch. 180; *Gleaves v. Prime*, 11 W. Rep. 273.

(*i*) *Tidd v. Lister*, 10 Hare, 140; *Elliot v. Cordell*, 5 Mad. 149; *Re Carr's Trust*, L. R. 12 Eq. 609.

(*k*) *Druce v. Denison*, 6 Ves. 395.

(*l*) *Garforth v. Bradley*, 2 Ves. Sen. 675.

(*m*) *Hill's Trustees*, 411.

enforce an equity for a settlement after her death, unless a decree for this purpose has been made in her lifetime (*n*). And this is the case even if the wife files a bill in her lifetime, but dies before a decree (*o*).

The proper form of a settlement is for the wife for life with remainder to such of her children, by her present or any future husband, as shall attain 21, or being daughters marry, with usual clauses, and if no child, for the husband (*p*).

### III. *Trusts for the separate use of a married woman, either with or without a restraint on anticipation.*

What is necessary to constitute a trust for separate use.

Cases where gift has been held to confer separate estate.

Property, whether real or personal, may be so settled as to give to a married woman a *separate estate* in equity, free from the control of her husband. The usual and proper mode of creating such an estate, is to limit the property to trustees in trust for the married woman "for her sole and separate use," but no particular form of words is necessary so long as the intention is shewn that she shall enjoy the property independently of her husband. Thus, a bequest of stock to trustees in trust to permit a married woman to receive the income "independent of her husband" (*q*); a bequest of residue to a married woman and her unmarried daughter in equal shares for their own use and benefit, "independently of any other person" (*r*); a bequest to trustees in trust to pay the income to a married woman, for life, "her receipt to be a sufficient discharge" (*s*); a bequest of bonds and mortgages to a married woman, with a direction that they should be delivered up to her "whenever she should demand or require the same" (*t*); and a bequest to a husband "for the livelihood of his wife" (*u*), have been held to confer a separate estate.

(*n*) *Scriven v. Tapley*, 2 Ed. 337 ;  
*Murray v. Lord Elibank*, 10 Ves. 84 ;  
*De la Garde v. Lempriere*, 6 Beav.  
 344.

(*o*) *Wallace v. Auldjo*, 2 Drew. &  
 Sm. 216 ; 1 De G. J. & S. 643.

(*p*) *Spirett v. Willows*, L. R. 1 Ch.  
 520 ; *Suggitt's Trust*, *ib.* 3 Ch.  
 215 ; *Croxton v. May*, *ib.* 9 Eq.  
 404 ; *Walsh v. Wason*, *ib.* 8 Ch.

482.

(*q*) *Wagstaff v. Smith*, 9 Ves.  
 520.

(*r*) *Margetts v. Barringer*, 7 Sim.  
 482.

(*s*) *Lee v. Prieaux*, 3 B. C. C.  
 381.

(*t*) *Dixon v. Olmius*, 2 Cox, 414.

(*u*) *Darley v. Darley*, 3 Atk. 399.

But a direction to pay the capital or income to a wife "into her own proper hands for her own use and benefit" (x), or "to her own use and benefit" (y), or to her absolute use (z), or the words, "to be under her sole control" (a), or a bequest to a female and her assigns for her life for her and their own absolute use and benefit (b), are not sufficient to create a trust for a wife's separate use. And in a recent case, where a testator devised lands to his wife "for her sole use and benefit" without the intervention of a trustee, it was held that she did not take a separate estate (c). This case has been followed by the House of Lords (d), and it may now be considered settled that the word "sole" has not acquired a technical meaning, and will not be construed as equivalent to "separate," unless the context shows such to have been the intention (e).

Cases where the contrary has been held.

Where a legacy was bequeathed to trustees for the support and maintenance of the wife of A., and for the support and education of A.'s children, and there were no children of A. at the testator's death, it was held that the wife took the legacy for her separate use (f). And where a legacy was by will directed to be applied to the separate use of a wife, a further annuity, which was given to her by codicil *in addition*, was held to be for her separate use (g).

A direction by will to purchase an annuity for the wife in her name, and to pay the same to her and her assigns, does not confer upon her a separate estate in the annuity (h).

So also a settlement of personalty on the wife for life for her separate use, with remainders over, with the ultimate remainder to her executors, administrators,

(x) *Tyler v. Lake*, 2 Russ. & My. 183; *Blacklow v. Laws*, 2 Hare, 49.

(y) *Johnes v. Lockhart*, cited 3 Bro. C. C. 385 n.

(z) *Ex parte Abbott*, 1 Deac. 338.

(a) *Massey v. Parker*, 2 M. & K. 174.

(b) *Rycroft v. Christie*, 3 Beav. 238.

(c) *Gilbert v. Lewis*, 1 De G. J. & S. 38. *Westbury, L. C.*, in giving judgment, referred to *Adamson v.*

*Armitage* as a case of doubtful authority, and to *Cox v. Lyne* as very erroneously reported. See also *Lewis v. Matthews*, 2 L. R. Eq. 177.

(d) *Massy v. Room*, L. R. 4 H. L. 288.

(e) *Re Tarsey's Trust*, L. R. 1 Eq. 561.

(f) *Cape v. Cape*, 2 Y. & C. Eq. Exch. 543.

(g) *Day v. Croft*, 4 Beav. 561.

(h) *Dakins v. Beresford*, 1 Cha. Ca. 194.

and assigns, does not create a trust for her separate use as to the ultimate remainder (*i*).

Separate estate may be disposed of by wife.

It is now settled that all property, whether real or personal, held in trust for the separate use of a married woman, whether for an estate in fee simple (*k*), or for any other estate or interest (*l*), can be disposed of by her independently of her husband, in all respects as if she were a *feme sole*, and that the deed of disposition need not be acknowledged.

If legal estate in land given to separate use of wife is vested in her, she can convey under Vendor and Purchaser Act, *semble*.

If it should happen that the legal estate in fee simple, as well as the equitable separate estate, is vested in the married woman, it is apprehended that upon a sale or mortgage she will be able, under sect. 6 of the Vendor and Purchaser Act, 1874, to convey the legal estate to the purchaser or mortgagee by an unacknowledged deed. The contract and payment of the consideration money will constitute her a bare trustee for the purchaser or mortgagee, and thus bring her within the operation of the section.

Restraint on anticipation.

A trust of the rents or income of real or personal property for the separate use of a married woman, is usually accompanied by a clause in the nature of a restraint on anticipation, in which case her power is restricted to that of receiving the income as it becomes due, and she is absolutely incompetent to make any disposition of the rents or income before they accrue due, nor can she give a valid power of attorney to receive them (*m*), and the Court cannot release the restriction, although it would be clearly for her benefit so to do (*n*).

What amounts to a restraint on anticipation.

A direction that the income shall be paid from time to time into the proper hands of the wife will not amount to a restraint on anticipation (*o*). So in a case (*p*) where stock was covenanted to be transferred to trustees to pay the dividends to such persons, and

(*i*) *D'Arcy v. Crofts*, 9 Ir. Ch. Rep. 19.

(*k*) *Taylor v. Meads*, 4 D. J. & S. 597.

(*l*) *Stead v. Nelson*, 2 Beav. 245; *Major v. Lansley*, 2 Russ. & My. 357; *Newcomen v. Hassard*, 4 Ir. Ch. Rep. 268, 273.

(*m*) *Kenrick v. Wood*, L. R. 9 Eq.

333.

(*n*) *Robinson v. Wheelwright*, 21 Beav. 214; 6 De G. Mac. and Gor. 535; see *Wilton v. Hill*, 25 L. J. Ch. 156.

(*o*) *Parkes v. White*, 11 Ves. 221.

(*p*) *Clarke v. Pistor*, cited 3 Bro. C. C. 568.

in such proportions as the wife, during her coverture, should, notwithstanding her coverture, by any note or writing under hand appoint, and in default of appointment, into her proper hands, the Court decreed a transfer of the fund to the husband with the wife's consent. Again, where a testator devised an estate to trustees in trust to pay the rents, &c., for the separate use of his wife for her life, and to pay the same as the same should become due and payable into her hands, and not otherwise; and he declared that her receipt alone for what should be actually paid into her own proper hands for such rents should be a good and sufficient discharge to the trustees. These words were held not to amount to a restraint on alienation (*q*).

On the other hand, a direction that the receipt of the wife for the annual income *after it shall have become due*, should be a sufficient discharge (*r*); or that the receipt of the wife alone, or of some person authorised by her to receive payment of the income after such *shall have become due*, shall be a sufficient discharge (*s*), has been held sufficient to restrain her from anticipating the income. The question to be considered in cases of this kind is, whether the words used are used for the purpose of unfolding what is implied in the gift to the separate use, or for the more extended purpose of modifying and controlling the gift (*t*). Again, where property was limited for the whole and sole separate use of a married woman, and not to be sold or mortgaged, it was held that an intention to restrain anticipation was sufficiently indicated (*u*). So where lands were devised to the use of E., the rents of which she was to receive from the tenants herself while she lived, whether married or single, followed by a declaration that no sale or mortgage should take place during the life of E., it was held that E. was entitled for her separate use, without power of anticipation (*x*).

(*q*) *Acton v. White*, 1 Sim. & Stu. 429.

(*r*) *Field v. Evans*, 15 Sim. 375.

(*s*) *Baker v. Bradley*, 7 De G. M. & G. 597.

(*t*) *Per Turner, L. J.*, in *Baker v. Bradley*, 7 De G. M. & G. 623.

(*u*) *Steedman v. Poole*, 6 Ha. 193.

(*x*) *Goulder v. Camm*, 1 De G. F. & J. 146. See also *Socket v. Wray*, 4 Bro. C. C. 483; *In re Young's Settlement*, 18 Beav. 199; *Ross's Trust*, 1 Sim. N. S. 196.



Restraint on anticipation may be annexed to corpus as well as income.

A gift for separate use without the intervention of trustees, makes husband a trustee, until wife assents to the destruction of the separate trust.

Separate income of wife, how long it remains her separate property.

Savings of separate income.

Payment of income to husband with wife's consent.

A restraint on anticipation may be annexed not only to a trust of income, but also to a limitation of the fee simple of land, or to an absolute gift of consols or other personal property producing income (*y*).

Where money or other property is given to the separate use of a wife without the intervention of trustees, and is paid or transferred to the husband, the separate trust remains attached to it unless and until it is shewn, or can be inferred from the circumstances, that she has assented to its being freed from the separate trust. Such an inference will be made if the husband, with the acquiescence of the wife, uses the money in trade or in his family expenditure (*z*), but in a case where a married woman to whom a legacy had been given, received from the executor a country cheque which she endorsed and handed over to her husband, whose bankers received it and by his direction placed the money to his deposit account, it was held on the evidence that the wife did not intend to give the cheque to her husband and that it was still her separate estate (*a*).

In like manner the separate income of a wife remains her separate property so long as it is retained in the hands of the trustees of the settlement, or is paid to her separate account at a bank, or to any person by her order and as her trustee, or if paid into her own hands remains under her separate control, and any stock or other property including real estate (*b*), or personal chattels (*c*), purchased with the savings of her separate income is also her separate property. But if the income is paid to the husband with the wife's acquiescence, a gift of such income from her to him will be presumed (*d*), and where the trust money is lent to the husband with the wife's consent, and he retains it for some time without paying interest, there will be a similar presumption as regards such interest (*e*).

(*y*) *Baggett v. Meux*, 1 Ph. 627; *Re Ellis' trusts*, L. R. 17 Eq. 409.

(*z*) *Gardner v. Gardner*, 1 Giff. 129.

(*a*) *Green v. Carlill*, L. R. 4 C. D. 882.

(*b*) *Darkin v. Darkin*, 17 Beav. 578.

(*c*) *Newlands v. Paynter*, 4 M. &

C. 408.

(*d*) *Beresford v. Archbishop of Armagh*, 13 Sim. 643; *Arthur v. Arthur*, 11 Ir. Eq. Rep. 511, 513; *Caton v. Rideout*, 1 M. & G. 599.

(*e*) *Rowley v. Unwin*, 2 K. & J. 139; *Ex parte Green*, 2 Deac. & Ch. 113.

When property is given in trust to pay the income to a woman who is unmarried at the date of the gift either with or without a restraint on anticipation, the separate trust will attach upon her subsequent marriage. In like manner a similar trust in favour of a married woman who becomes a widow and then marries again, will revive on her second marriage (*f*), unless confined by the express terms of the instrument to the first coverture (*g*). In these cases the income which is received by the *cestui que trust* while discovert, or by any person on her behalf, from the trustees of the fund, becomes her absolute property, and if unspent at the time of her subsequent marriage will pass to the husband in his marital right (*h*). But if it should happen that any part of such income, although received by the trustees, has not been paid over by them to the *cestui que trust* or to any person on her behalf at the time of the marriage, the separate trust will attach to the money retained in the hands of the trustees (*i*).

A trust of income for separate use attaches during each coverture, and is suspended during discoverture.

So also a trust for separate use annexed to the corpus of property whether real or personal given to an unmarried woman will come into operation on her subsequent marriage, provided that she does no act while discovert to destroy the separate trust. Thus in a case where a leasehold house and the furniture in it were given by will without the intervention of trustees to a single woman for her separate use, and she subsequently married, and after the marriage she and her husband took possession of the house and furniture, it was held that they retained their separate character, and were not liable to the husband's debts (*k*).

So also a trust of corpus for separate use comes into operation on marriage.

In order to keep alive the separate trust, the property must remain in the same state until the marriage. Thus where a sum of stock given by will to a single woman for her separate use without power of anticipation was at her request transferred into her name by the executors, and she sold it out and spent part of the

What acts of the wife will put an end to the separate trust.

(*f*) *Tullett v. Armstrong*, 1 Beav. 1; *Scarborough v. Borman*, 4 M. & C. 377.

(*g*) *Moore v. Morris*, 3 Jur. N. S. 552.

(*h*) *Spicer v. Dawson*, 26 L. J.

Ch. 704.

(*i*) *Ashton v. Macdougall*, 5 Beav. 56.

(*k*) *Newlands v. Paynter*, 4 M. & C. 408.

money and with the remainder bought some bank shares and Canada bonds, and then married, the Court held that the bank shares and Canada bonds belonged to her husband free from any trust (*l*). It seems to have been the opinion of the V.-C. in this case that the act which destroyed the separate trust was, not the transfer of the stock to the lady, but her sale of it, and that if the stock had remained in her name up to the marriage, it would have been her separate property after that event.

Her contracts.

A contract entered into by a married woman for a valuable consideration for the mortgage or other disposition of her separate estate will be binding on her (*m*), and she is entitled to enter into a contract for the purchase of property out of her separate estate (*n*); and the separate estate will be bound, whether it is referred to in the contract or not (*o*). Also an agreement for a valuable consideration by a married woman to execute a power limited to her will be enforced (*p*).

Wife's right to furniture settled to separate use against husband's assignees.

When furniture belonging either to the wife or husband is by an ante-nuptial settlement assigned to a trustee for the separate use of the wife, it will not pass to the trustee in bankruptcy of the husband as being in his order and disposition at the time of the bankruptcy (*q*), nor need the assignment be registered under the Bill of Sales Registration Act, marriage settlements being expressly excluded from the operation of that Act (*r*). But a *post-nuptial* settlement is not within the exception, and must be registered (*s*). If registered, it will prevail against the husband's creditors, although the goods may be in his house at the time of his bankruptcy (*t*), subject, however, in case the settlement is voluntary, to the operation of sect. 91 of the Bankruptcy Act, 1869.

(*l*) *Wright v. Wright*, 2 J. & H. 647.

(*m*) *Stead v. Nelson*, 2 Beav. 245.

(*n*) 2 Bright's H. & W. 254.

(*o*) *Dowling v. Maguire*, L.L. & G. t. Plunk. 1.

(*p*) *Dowell v. Dew*, 12 L. J. Chan. 158.

(*q*) *Jarman v. Wolloton*, 3 T. R. 618; *Simmons v. Edwards*, 16 M. & W. 838.

(*r*) Sect. 9.

(*s*) *Fowler v. Foster*, 28 L. J. Q. B. 210.

(*t*) *Ex parte Cox*, L. R. 1 C. D. 302.

IV. *To what extent property belonging to the wife for her separate use or subject to her power of appointment is liable to her debts contracted during the coverture, or before the marriage.*

A married woman cannot enter into any contract on which she is liable to be personally sued (*u*), but if she has separate property, she may, as an incident of such property, contract debts and engagements to be paid and satisfied out of it, and a Court of Equity will enforce payment by a decree against the trustee in whose hands the property is (*x*). It is not necessary that the contract should refer in terms to the separate property; it is sufficient if an intention to charge it can be collected from the nature of the contract or from the circumstances. Thus bonds, bills, promissory notes, and other written obligations will be enforced against the separate property, because these acts would otherwise be nugatory and consequently an intention to charge will be presumed (*y*). With regard to mere general engagements, such as tradesmen's bills and claims of that nature, the question will in each case depend on whether credit was given to the wife. Thus if the wife is living separately from her husband the inference would generally be that the credit was given to her, though if they were living together, it would be more reasonable to suppose that she intended her husband to pay (*z*).

A married woman may contract debts to be paid out of her separate property.

General engagements.

If the separate property be real estate, the Statute of Frauds renders a written engagement necessary to bind it, but a writing is not necessary in the case of personality.

Writing necessary to bind real estate.

It was held in a late case that personal property given to trustees in trust to pay the income to a married woman for life for her sole and separate use, with a

Property over which wife has power of appointment when affected.

(*u*) *Marshall v. Rutton*, 8 T. R. 545.

*Johnson v. Gallagher*, 3 De G. F. & J. 494.

(*x*) *Standford v. Marshall*, 2 Atk. 69; *Hulme v. Tenant*, 1 B. C. C. 15; *Heatley v. Thomas*, 15 Ves. 596; *Bullpin v. Clarke*, 17 Ves. 365; *Murray v. Barlee*, 3 M. & K. 209;

(*y*) *Murray v. Barlee*, 3 M. & K. 209.

(*z*) *Johnson v. Gallagher*, *ubi supra*.

power for her to appoint the corpus by deed or will, with an ultimate trust in default of appointment for her executors or administrators, was equivalent to an absolute settlement of the corpus for her sole and separate use, and consequently that the property so settled was liable to an engagement contracted by her in respect thereof (*a*).

Charge of debts by will a good execution of a power.

Whether an appointment by will without any reference to debts, makes the property assets *quære*.

If a married woman having only a testamentary power of appointment makes her will and thereby charges the property which is the subject of the power with the payment of her debts, the charge is effectual and extends to her general engagements (*b*). But if she simply appoints to one or more persons without any reference to her debts, the question arises whether the established rule that property appointed under a power is thereby made assets for the payment of the appointer's debts in aid of his general estate (*c*), applies to such an appointment by a married woman. V.-C. Kindersley has decided that the rule is applicable as regards debts contracted before marriage, and also as regards the obligation of a married woman to make good the consequences of fraud committed by her, as where she has obtained credit by representing herself to be single, but not as regards her ordinary debts contracted after marriage, *i.e.* such engagements as would be binding on her separate estate; the ground of his Honor's decision apparently being that, in the latter case, the so called debts are not debts at all, a married woman being incapable of contracting debts except as regards separate estate, which property subject to a power is not (*d*). The distinction thus made has been apparently disapproved of by the Privy Council in a recent case (*e*), and seems unsound. The engagements of a married woman where credit appears to have been given to her and not her husband are her debts in the

(*a*) London Chartered Bank of Australia *v.* Lempriere, L. R. 4 P. C. 572. Shattock *v.* Shattock, L. R. 2 Eq. 182 seems to be overruled.

(*b*) Owen *v.* Dickenson, A. & Ph. 48.

(*c*) Fleming *v.* Buchanan, 3 D. M. & G. 976; Williams *v.* Lomas, 16

Beav. 1.

(*d*) Vaughan *v.* Vanderstegen, 2 Drew. 165, 363; Blatchford *v.* Woolley, 2 Dr. & Sm. 204.

(*e*) London Chartered Bank of Australia *v.* Lempriere, L. R. 4 P. C. 596.

ordinary sense of the term, and have been treated as such not only as against her separate estate but also as against property by will expressly charged with the payment of debts (*f*). Why should not they be equally so treated as against property appointed under a power, and which is by an established rule of equity made assets for the payment of debts generally?

Although the separate property of a married woman will be applied by a Court of equity to make good the consequences of her fraud committed in relation to such estate, no such equity can be enforced, where she is restrained from anticipating (*g*).

Separate property liable to make good fraud, unless there is a restraint or anticipation.

Until the passing of the Married Women's Property Act, 1870, a husband was liable to all his wife's debts contracted before marriage, on the principle that as he took her property so he ought to take her liabilities. The husband and wife had to be sued jointly for the wife's debt, and if no action was brought during the coverture, and the wife survived, her liability revived. In a late case (*h*), it was held that property settled by a woman on her marriage for her separate use was liable, after her husband's bankruptcy, for debts contracted by her before marriage.

Before Act of 1870, husband was liable for his wife's debts contracted before marriage.

By the Married Women's Property Act, 1870, it was provided (*i*) that a husband should not by reason of any marriage which should take place after it came into operation (on 9th August, 1870), be liable for the debts of his wife contracted *before* marriage, but the wife should be liable to be sued for, and any property belonging to her for her separate use should be liable to satisfy such debts as if she had continued unmarried (*k*). The effect of this enactment was that if a woman possessed of property, and owing debts, married without a settlement, so that her property passed to her husband, her creditors were without remedy. The Act deprived them of the right to sue the husband, and it would

Act of 1870 makes wife liable in respect of her separate property, and husband not liable.

(*f*) *Owens v. Dickenson*, *ubi supra*.

(*g*) *Jackson v. Hobhouse*, 2 Mer. 483; *Clive v. Carew*, 1 J. & H. 199; *Arnold v. Woodhamis*, L. R. 16 Eq. 29.

(*h*) *Chubb v. Stretch*, L. R. 9 Eq. 555.

(*i*) Sect. 12.

(*k*) *Sanger v. Sanger*, L. R. 11 Eq. 470.

have been no use to sue the wife as she would have no property to meet the demand.

Amend-  
ment Act,  
of 1874  
revives  
husband's  
liability to  
extent  
of assets  
acquired  
from wife.

This defect is remedied by the Married Women's Property Amendment Act, 1874 (37 & 38 Vict. c. 50), which repeals, so far as respects marriages after the 30th July, 1874, so much of the Act of 1870 as enacted that a husband should not be liable for the debts of his wife contracted before marriage, and substitutes other provisions, making the husband liable to the extent only of the assets therein specified, being in effect, all property acquired by him in his wife's right, or which he might with reasonable diligence have so acquired.

V. *The effect of separation or desertion as to the wife's power to bind the husband for necessaries, and as to her property and earnings.*

Presump-  
tion during  
cohabita-  
tion that  
wife has  
authority  
to contract  
for  
necessaries.

So long as a husband and wife live together it is presumed that the husband has authorised the wife to enter into contracts for necessaries, *i.e.*, articles suitable to the wife's station and degree, or to the station and degree which her husband permits her to assume (*l*). But this presumption may be rebutted by evidence that the husband has expressly refused such authority, as by warning tradesmen not to trust his wife; or, according to a recent case, by evidence that the husband has ordered his wife not to pledge his credit, although such order is not communicated to the tradesman (*m*).

Contrary  
presump-  
tion, if  
living  
separate.

But if the husband and wife are living separately, the presumption is the other way, and it lies on the creditor to show that the wife is living apart from her husband under circumstances which give her an implied authority to bind him (*n*).

When in  
case of  
separation  
the power  
will be  
implied.

Such authority will be implied when the separation is by mutual consent, unless the husband makes to the wife an adequate allowance, and duly pays such allowance—*a fortiori* it will be implied where the husband expels his wife from his house without sufficient cause,

(*l*) Philipson v. Hayter, L. R. 6 177; Byles, J., dissentiente.  
C. P. 38. (*n*) 14 C. B. N. S. 382.  
(*m*) Jolly v. Rees, 33 L. J. C. P.

or forces her to abandon it by his cruelty. But if the wife elopes, or is turned away for her own misconduct, as for adultery, the husband is not liable. If the separation is under the judgment of the Court, and the Court awards alimony, the wife can bind the husband if such alimony is not duly paid, but not otherwise.

It has been held that a person advancing money to a married woman who has been deserted by her husband, which money has been laid out in necessities for her, is in a court of equity entitled to stand in the place of the persons who actually supplied those necessities, and to recover the money from the husband (o).

Previously to the statute mentioned in the next paragraph, a married woman living separate from her husband did not acquire a separate interest in property acquired by her own earnings, unless under an agreement by her husband to that effect (p). But an agreement by the husband that the wife shall enjoy her earnings for her separate use, amounts in equity to a declaration of trust, so that the husband becomes a trustee of such earnings for the wife (q). And in a case where husband and wife had lived apart for many years, and the husband remitted money for his wife's support, it was held that the savings of such money was separate estate (r).

Previously to recent statute, earnings of wife living separate belonged to husband.

By the recent Divorce Act (s), it is provided that a wife deserted by her husband may at any time after such desertion, if resident within a metropolitan district, apply to a police magistrate, or, if resident in the country, to justices in Petty Sessions, and in either case to the Divorce Court for an order to protect "any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion, against her husband, or his creditors, or any person claiming under him." And by the Divorce Amendment Act (t) it is provided that

20 & 21 Vict. c. 85, s. 21.

21 & 22 Vict. c. 108, s. 6.

(o) Jenner v. Morris, 1 D. & S. 218; 3 De G. F. & J. 45; Deare v. Southen, L. R. 9 Eq. 151.

(p) Lamphir v. Creed, 8 Ves. 599.

(q) Haddon v. Fladgate, 1 S. & T. 48; 27 L. J. Prob. 21. See also Cecil v. Juxon, 1 Atk. 278; Rich v.

Cockell, 9 Ves. 369; Mews v. Mews, 15 Beav. 529.

(r) Brooke v. Brooke, 25 Beav. 342.

(s) 20 & 21 Vict. c. 85, s. 21.

(t) 21 & 22 Vict. c. 108, s. 6.



every wife so deserted wheresoever resident in England, may, at any time after such desertion, apply to the Judge Ordinary for an order to protect such property, and that he shall exercise in respect of every such application all the powers conferred upon the Court under the Divorce Act.

By sect. 25 of the Divorce Act it is provided that in every case of a judicial separation the wife shall from the date of the sentence and whilst the separation shall continue, be considered as a *feme sole* with respect to property of every description which she may acquire, or which may come to or devolve upon her ; and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead ; provided that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between her husband and herself whilst separate. And by section 26 it is provided, that in every case of a judicial separation the wife shall, whilst so separated, be considered as a *feme sole*, for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding, and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant, provided that where upon any such judicial separation alimony has been decreed or ordered to be paid to the wife and the same shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use, provided also that nothing shall prevent the wife from joining at any time during such separation in the exercise of any joint power given to herself and her husband.

By the Divorce Amendment Act (*u*), it is declared that the provisions contained in that Act and in the Divorce Act respecting the property of a wife who has obtained a decree for judicial separation, or an order

(*u*) 21 & 22 Vict. c. 108, s. 7.

for protection, shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee, since the sentence of separation or the commencement of the desertion (as the case may be); and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix. And section 8 provides that in every case in which a wife shall, under the said Acts, have obtained an order to protect her earnings or property, or a decree for judicial separation, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual, and no discharge, variation, or reversal of such order or decree, shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed, varied, or discharged, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the making such order or decree, and of the discharge, variation, or reversal thereof, and property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion or decree (as the case may be), shall be deemed to be included in the protection given by the order or decree. It is also provided by section 9, that every protecting order shall state the time at which the desertion, in consequence whereof the order is made, commenced; and the order shall, as regards all persons dealing with such wife in reliance thereon, be conclusive as to the time when such desertion commenced.

In the case of a judicial separation, or of the wife obtaining a protection order, she is entitled absolutely not only to property given to her afterwards (*x*), but also to property which was reversionary or not reduced into possession before the separation or protection order, and which falls into possession, or she reduces into possession afterwards (*y*). And in a case where a fund was bequeathed to trustees in trust to pay the income to

Cases to which protecting order has been held to apply

(*x*) *Re Kingsley*, 26 Beav. 85.  
 (*y*) *Re Insole*, L. R. 1 Eq. 470;  
*Johnson v. Lander*, *ib.* 7 Eq. 228;

*Re Coward & Adam's purchase*, *ib.*  
 20 Eq. 179.

the wife for her separate use without power of anticipation, and after her decease to her appointees by deed or will, and she, after obtaining a protecting order, appointed the fund to her daughter, the Court on the joint application of her and her daughter, ordered payment of the fund to them (z).

Protecting  
order should  
be general.

A protecting order should be in general terms, for the Court has no power to decide what title the wife has to specific property (a).

20 & 21 Vict.  
c. 85, s. 45.

By the 20 & 21 Vict. c. 85, s. 45, it is provided that in any case in which the Court shall pronounce a sentence of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife was entitled to any property either in possession or reversion, it shall be lawful for the Court, if it should think proper, to order such settlement as it shall think reasonable to be made of such property, or any part thereof, for the benefit of the innocent party, and of the children of the marriage or either of them; and by the 23 & 24 Vict. c. 144, s. 6, it is enacted that any instrument executed pursuant to any such order, at the time of or after the pronouncing of a final decree of divorce or judicial separation shall be deemed valid and effectual in the law, notwithstanding the existence of the disability of coverture at the time of the execution thereof.

The Court has no jurisdiction to release a husband from the stipulations contained in his marriage settlement after a decree for dissolution of his marriage (b).

Power of  
wife during  
transporta-  
tion of  
husband.

If the husband abandon his country or is transported it appears that during the period of such abandonment or transportation, and until his actual return, the wife may contract, pay, and receive money, or sue and be sued as a single woman (c).

(z) *Cooke v. Fuller*, 26 Beav. 99.

(a) *Mullineux, Ex parte*, 1 S. & T. 79; 27 L. J. Prob. 19.

(b) *Evans v. Carrington*, 6 Jur.

N. S. 268; *Bell v. Marquis of Anglesey*, 1 S. & T. 655.

(c) 2 Bright's H. & W. 70.

## SETTLEMENTS.

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IN this Dissertation it is proposed to consider—I. Division of subject. Marriage Settlements generally. II. Voluntary Settlements, how far they are valid as against (1) subsequent purchasers, (2) creditors, and (3) the settlor himself and his representatives ; and III. Stamps on Settlements.

### I. *Marriage Settlements generally.*

IN settlements of personal estate made upon marriage, the first trusts (after providing for the investment of the trust funds) generally relate to the destination of the income during the lives of the husband and wife. When the property settled comes from the husband, the first life interest is, except under special circumstances, given to him. When, on the other hand, the wife makes the settlement, it is usual to give her the income during the coverture for her separate use, without power of anticipation, but the husband is sometimes permitted to receive the income of his wife's as well as of his own property, charged with the payment to the wife of an annual sum during the coverture by way of pin-money or even without such charge. Trusts for payment of income during lives of husband and wife.

Sometimes it is desired, particularly if the husband is improvident, or is in embarrassed circumstances, or is engaged in a hazardous business, to make his life interest determinable on his bankruptcy, or on his attempting to alien or charge it. With regard to clauses of this description, the following points may be considered as settled :—1. That where the property settled comes from the wife, or from any other source than the husband himself, a gift over on the husband's bankruptcy or alienation is valid (*a*). And this is the case where the Gifts over on alienation or bankruptcy, &c.

(*a*) *Dommett v. Bedford*, 3 Ves. 149 ; *Lockyer v. Savage*, 2 Stra. 947 ; *Ex parte Hinton*, 14 Ves. 598. Cases in which such gifts over are valid.

wife becomes entitled to money after the marriage, and she and her husband join in so settling it (*b*). 2. That where the property settled comes from the husband himself, such a gift over is invalid as against his assignees in bankruptcy (*c*), but good against his alienees (*d*). 3. That where the husband receives part of his wife's fortune on marriage and settles property of his own upon himself for life with a gift over on bankruptcy, &c., the wife will be considered as a purchaser of the property so settled to the extent of her fortune received by the husband, and consequently the gift over will to that extent be valid against the husband's assignees in Bankruptcy (*e*). 4. That a mere condition annexed to the gift of a life interest that the donee shall not alien, unless followed by a gift over, or unless the destination of the income during the rest of the life of the donee is in some way provided for by the instrument, will be inoperative (*f*). 5. That a clause forfeiting a life interest on the bankruptcy of the donee, though in terms referring to a future bankruptcy, takes effect, where the donee is an uncertificated bankrupt, at the date of the instrument of gift (*g*). 6. That if the bankruptcy is annulled before any payment becomes due to the donee under the instrument, there is no forfeiture (*h*).

(*b*) *Montefiore v. Behrens*, 1 L. R. Eq. 171.

(*c*) *Higinbotham v. Holme*, 19 Ves. 88.

(*d*) *Brooke v. Pearson*, 27 Beav. 181; *Knight v. Browne*, 30 L. J. Ch. 649. In *Phipps v. Lord Ennismore*, 4 Russ. 131, a life estate was given to A. by marriage settlement, and by a separate deed executed at the same time he covenanted with the trustees that he would not alien or encumber his life estate, and that if he did, then the trustees should apply the rents for the benefit of A. and his wife and children, or any of them at their discretion. A. afterwards charged his life estate for valuable consideration in favour of persons who had no notice of the second deed, and it was held that the second deed was fraudulent and void as against them. The ground of this decision was, it is conceived, the covenant being contained in

a separate and, as it were, secret deed.

(*e*) *Lester v. Garland*, 5 Sim. 205. See also *Ex parte Cooke*, 8 Ves. 353; *Ex parte Hodgson*, 19 Ves. 206.

(*f*) *Brandon v. Robinson*, 18 Ves. 429. A proviso annexed to a trust to pay an annuity that the annuity shall cease upon alienation, &c., is valid and operative. In such a case there is in effect a gift over, as the annuity sinks into the property charged therewith, or out of which it is payable for the benefit of the persons entitled to such property: *Dommett v. Bedford*, 3 Ves. 149; *Rochford v. Hackman*, 9 Hare, 475, 481; *Joel v. Mills*, 3 K. & J. 458.

(*g*) *Manning v. Chambers*, 1 De G. & Sm. 282; *Seymour v. Lucas*, 1 Drew. & Sm. 177; *Re Muggeridge's Trust*, Johns. 625; *Trappes v. Meredith*, L. R. 7 Ch. 248.

(*h*) *White v. Chitty*, L. R. 1 Eq.

The construction of conditions against alienation depends of course upon the particular language used in each case. Where the gift over was to take effect if the donee should "assign, mortgage, or in any manner anticipate or attempt or agree to assign, mortgage, or otherwise anticipate," it was held that the bankruptcy of the donee was not a forfeiture (*i*). With regard to insolvency, the question has in most cases turned upon, 1st, the particular language of the instrument; and, 2ndly, whether the insolvency has arisen from the voluntary act of the donee or not (*k*). The signing of a warrant of attorney is not a breach of condition against alienation unless it is done as a contrivance to evade such condition (*l*). But where a judgment creditor obtained a charging order, it was held to be a forfeiture of a life interest, which was given until the tenant for life should assign, or do or suffer any act whereby the income should become payable to some other person (*m*).

Construction of clauses of this kind.

If property is limited to A. until he shall alienate or otherwise dispose of his interest, any attempted alienation or disposition voluntarily made by A. would work a forfeiture (*n*).

After the decease of both husband and wife, the ordinary trusts of a marriage settlement are for the children, or remoter issue of the marriage (*o*), as the husband and

Trusts for issue after decease of husband and wife.

372; *Lloyd v. Lloyd*, *ib.* 2 Eq. 722; *Trappes v. Meredith*, *ib.* 9 Eq. 229; But see *Parnham's Trusts*, *ib.* 13 Eq. 418.

(*i*) *Graham v. Lee*, 23 Beav. 388. See also *Lear v. Leggett*, 1 R. & M. 690.

(*k*) See *Shee v. Hale*, 13 Ves. 404; *Yarnold v. Moorhouse*, 1 R. & M. 364; *Whitfield v. Prickett*, 2 Keen. 608; *Pym v. Lockyer*, 12 Sim. 394; *Brandon v. Aston*, 2 Y. & C. N. C. 24; *Churchill v. Marks*, 1 Col. C. C. 441; *Rochfort v. Hackman*, *ubi supra*; *Kiallmark v. Kiallmark*, 26 L. J. Ch. 1.

(*l*) *Avison v. Holmes*, 1 J. & H. 530.

(*m*) *Roffey v. Bent*, 3 L. R. Eq. 759.

(*n*) *Lewes v. Lewes*, 6 Sim. 304; *Stephens v. James*, 4 Sim. 499; *Oldham v. Oldham*, 3 L. R. Eq. 404.

(*o*) On the recent marriage of a ward of court possessed of a considerable fortune, the judge of the Court of Chancery before whom the settlement came for approval refused to allow the power of appointment given to the lady to be extended to remoter issue than children, on the ground that she might capriciously pass over a child in order to benefit a favourite grandchild. The learned judge's objection seems to the writer to have been founded on a very partial view of the matter, and in order to be consistent, he should not have allowed the lady any power of appointment at all, even among her children, because she would be quite as likely to give an unfair preference to one child over another, as to a grandchild over its parent. As regards the general question whether there

Whether power of appointment should be extended to issue.

wife or the survivor shall appoint; and in default of appointment for the children equally, the shares of sons to vest at twenty-one, and the shares of daughters to vest at twenty-one or marriage, with a provision that any appointed share should be brought into hotchpot.

The advantage of extending the power to remoter issue is, that if a son to whom no share has been appointed, should die, leaving issue, the donees of the power are enabled to provide for such issue; and other cases may happen in which it may be desirable that grandchildren should be provided for, either by way of executory limitation after a life interest given to their father or mother, or without any such intermediate interest.

Maintenance clause, &c.

The maintenance clause which used to be inserted as a common form in settlements, may now be safely omitted, having regard to sec. 26 of 23 & 24 Vict. c. 145 (*p*).

Advancement clause.

The advancement clause, according to the usual form, enables the trustees to raise any part not exceeding one half of a child's vested or presumptive share, and apply it for his or her advancement, preferment, or benefit. It has been held that the word "benefit" has a more extensive application than "advancement" or "preferment," and authorizes the payment of debts incurred by the object of the power (*q*).

Alternate trusts in default of issue.

If there are no issue of the marriage who live to attain a vested interest, it is usually provided that the trust property, if settled by the husband, shall revert to him, and if settled by the wife, shall go to her appointees by

should be a power of appointment at all, the balance of convenience is generally considered to be in favour of giving the power. It is true that it may be, and sometimes is, unfairly and capriciously exercised, but the danger of this is not deemed sufficient to outweigh the advantage of putting it in the power of the parents to make an unequal division in case circumstances should arise rendering such a course desirable; as for example, an accession of fortune to one child from another source, or insolvency, or misconduct.

(*p*) See the Act printed at length in the Appendix. In former edi-

tions of this work, the retention of the ordinary maintenance clause was recommended on the ground, that the 26th section of the Act is not clearly worded, and its construction might be open to some doubt. But all doubt as to its applicability to the ordinary trust for a class of children attaining twenty-one, or being daughters marrying under that age, has now been removed by judicial decision. *Re Cotton*, L. R. 1 C. D. 232; *Re George*, 5 C. D. 837.

(*q*) *Lowther v. Bentinck*, L. R. 19 Eq. 167.

will, or in default of appointment, to her absolutely if she survives the coverture, but if not, to her next of kin, under the Statutes of Distribution, as if she had died without having been married. If the testamentary power is given to her in the event only of her dying during the coverture, a will made during that period will not take effect if she survives (*r*). It is therefore desirable to make it exerciseable in either event.

It will be borne in mind, that as a marriage may now be dissolved otherwise than by the death of one of the parties, the alternative events to be provided for in the ultimate trusts of the wife's property are, not the wife surviving or dying in the lifetime of her husband, but the wife surviving, or dying during the continuance of, the coverture. Otherwise, should the marriage be dissolved by a divorce, the wife, though the innocent party, would not, according to the terms of the deed, take an absolute interest in her property, unless she also survived her husband (*s*).

Possibility of divorce, how it affects form of alternate trusts.

The ultimate trust, in default of appointment by will and in case the wife dies during the coverture, should be in favour of the persons who would have taken under the Statutes of Distribution if the wife had died, &c., *without having been married*. If the word "unmarried" is used, it will be construed to mean "without leaving a husband;" and, consequently, if it should happen that the wife dies, leaving the husband and one infant child, and such child subsequently dies an infant, the whole fund would go to the husband as the next of kin of such child (*t*).

Construction of word "unmarried" in ultimate trust.

A provision for bringing into settlement the after-

Provision for settling

(*r*) *Willock v. Noble*, L. R. 7 H. L. 580. But if the ultimate trust in case of the wife surviving is for her separate use, a will made during coverture will operate; *Bishop v. Wall*, L. R. 3 C. D. 194.

(*s*) In *Jessop v. Blake*, 3 Giff. 639; *Swift v. Wenman*, L. R. 10 Eq. 15; *Fussell v. Dowding*, *ib.* 14 Eq. 421, it appears to have been held that a divorce on account of the husband's misconduct (there being no issue) had the effect of placing the parties in the same position as if the husband had died on the day of the

divorce, and the fund was accordingly ordered to be paid to the wife, notwithstanding (in the two latter cases) that the settlement gave the husband a life interest in the event of his being the survivor. But these decisions have been disapproved of in a recent case, *Fitzgerald v. Chapman*, L. R. 1 C. D. 563, by the present Master of the Rolls, who declined to follow them. See also *Burton v. Sturgeon*, 2 C. D. 318.

(*t*) *Pratt v. Matthew*, 8 De G. M. & G. 522; *Clarke v. Colls*, 9 Ho. of L. Ca. 601.



after-  
acquired  
property.

Construc-  
tion of  
provisions  
of this  
nature.

acquired property (if any) of the wife is frequently introduced into settlements.

With respect to the construction of provisions of this nature, the following points have been decided.

1. That a covenant to settle all the property to which the wife or the husband in her right *shall become entitled during the coverture*, does not include property in which the wife has at the time of the marriage a vested interest in possession, nor property in which she has an estate in reversion which does not fall in until the coverture has determined (*u*).

2. That a covenant in similar form includes property to which the wife is at the date of the settlement entitled in reversion, whether for a vested or contingent interest, and which interest falls into possession during the coverture. The words "become entitled" import a change of condition, and when property in reversion becomes property in possession, its condition is changed sufficiently to satisfy the terms of the covenant (*x*).

3. That a covenant in a similar form extends to property to which the wife becomes entitled in reversion during the coverture, and which falls into possession after the coverture has determined, if the husband is the survivor (*y*); and the result is the same where the wife is the survivor, if she joins in the covenant (*z*).

4. That if (as is now usual) the covenant extends to property to which the wife is entitled at the date of the settlement or of the marriage, such a covenant will include property in which she has a reversionary interest at the time of the marriage (whether vested or contingent) but which does not fall into possession until the coverture has determined (*a*).

(*u*) *Otter v. Melville*, 2 De G. & Sm. 257; *Hoare v. Hornby*, 2 Yo. & Col. N. C. 121; *Wilton v. Colvin*, 3 Drew. 617; *Archer v. Kelly*, 1 Drew. & Sm. 300; *Churchill v. Shepherd*, 33 Beav. 107; *Re Pender's Settlement*, L. R. 10 Eq. 585; *Re Clinton's Trust*, *ib.* 13 Eq. 295. The cases of *Graffey v. Humpage*, 1 Beav. 46; *James v. Durant*, 2 Beav. 177; *Re Hughes' Trusts*, 4 Giff. 432; *Viant's Settlement*, L. R. 18 Eq. 436, seem contrary to the position in the text, but they must

be treated either as decided upon the special circumstances of the case, or upon grounds cut away by subsequent cases, such as *Archer v. Kelly*, *ubi supra*.

(*x*) See *Archer v. Kelly*, *ubi sup.* *Blythe v. Granville*, 13 Sim. 190; *Ex parte Blake*, 16 Beav. 463.

(*y*) *Hughes v. Young*, 9 Jur. N. S. 167; 32 L. J. Ch. 137.

(*z*) *Butcher v. Butcher*, 14 Beav. 222; *Cowper Smith v. Anstey*, W. N. 1877, p. 28.

(*a*) *Agar v. George*, L. R. 2 C. D. 706.

5. That a provision for settling after-acquired property of the wife binds money given to her separate use, if such provision is in the form of a covenant by the wife as well as by the husband, or of a general agreement by all parties (*b*). But it is otherwise if the covenant is by the husband only (*c*); and if the provision is in the form of an agreement by all parties and a covenant by the husband alone, and the conveyance or act to be made or done is, according to the form of the deed, to be made or done by the husband alone, it seems that money given to the separate use of the wife would not be bound (*d*). But if the conveyance or act is to be made or done by the husband and wife, the separate property is bound (*e*).

6. That a covenant by the husband and wife for settling after-acquired property, does not extend to property over which the wife has a general power of appointment and which is given to some one other than the wife in default of appointment (*f*), but if the wife is herself entitled in default of appointment, it is apprehended that her interest will be bound, and that she cannot defeat the covenant by an appointment (*g*).

7. That such a covenant does not bind property which the wife is restrained from disposing of (*h*).

8. That if at the time of the settlement the wife is an infant, and she enters into a covenant to settle her after-acquired property, she must elect whether she will perform such covenant, or give up any interest given to her by the same instrument in her husband's property (*i*).

9. That such a covenant applies only to property acquired during coverture, although the words "during the coverture" are omitted (*j*).

(*b*) *Butcher v. Butcher*, *ubi sup.*; *Willoughby v. Middleton*, 2 J. & H. 344; *Coventry v. Coventry*, 32 Beav. 612. But see *Re Mainwaring's Settlement*, 2 L. R. Eq. 487.

(*c*) *Travers v. Travers*, 2 Beav. 179; *Douglas v. Congreve*, 1 Keen, 423; *Grey v. Stuart*, 2 Giff. 398.

(*d*) *Ramsden v. Smith*, 2 Drew. 298.

(*e*) *Campbell v. Bainbridge*, 6 L. R. Eq. 269.

(*f*) *Ewart v. Ewart*, 11 Hare, 276;

*Townshend v. Harrowby*, 27 L. J. Ch. 553; *Bower v. Smith*, L. R. 11 Eq. 279.

(*g*) *Steward v. Poppleton*, W. N. 1877, p. 29.

(*h*) *Coventry v. Coventry*, *ubi sup.* See also *Brooks v. Keith*, 1 Dr. & Sm. 463.

(*i*) *Willoughby v. Middleton*, *ubi supra*; *Codrington v. Lindsay*, L. R. 8 Ch. 578.

(*j*) *Dickinson v. Dillwyn*; *Carter*

It has been held by Vice-Chancellor Kindersley, that property bequeathed by a testator to his daughter who died in his lifetime, but whose husband and child survived him, and which property consequently came within the 33rd section of the Wills Act (*k*), was not subject to a covenant contained in the daughter's marriage settlement for settling her after-acquired property. His Honour thought that the fiction introduced by the 33rd section of the Wills Act, was not to be extended further than was necessary to prevent a lapse (*l*).

Power to wife to appoint to future husband and issue of future marriage.

When the property settled on the part of the wife is of considerable amount, it is desirable that a power should be reserved to her to appoint a portion of the trust funds in favour of a second husband, and the issue of a second marriage. In the absence of such a power, the wife may be left a widow by her first husband with only one child, and if she marries again, the whole of her fortune will go to the child of the first marriage, to the exclusion of the family, however large, of the second marriage. And the same observation applies sometimes as regards the property settled by the husband.

Sometimes the original trust is for children by any marriage.

Sometimes the object above referred to is attained by making the trust fund divisible under the terms of the original trust among the children of the wife or husband, as the case may be, by any marriage. If this is done, care should be taken to insert a power to the settlor to revoke, in case of there being a failure of issue of the first marriage.

Form of settlement of land, where children are to take equally.

Where the property to be settled consists of land, and it is desired to settle it in such a way as that the children shall take equally, the proper mode of attaining that object is by conveying it to trustees in trust for sale, and then settling the proceeds as personal estate, with a proviso that until sale, the rents and profits shall be paid and applied in the same manner as the income of the proceeds would be applicable if a sale had been made. The trust for sale is mere machinery to effect a division of the property, without the necessity of the complicated and inconvenient limitations which

*v. Carter*, L. R. 8 Eq. 547, 551; *Re Edwards*, L. R. 9 Ch. 97; *Re Campbell's Policies*, W. N. 1877, p. 6.

(*k*) 1 Vict. c. 26.

(*l*) *Pearce v. Graham*, 32 L. J. Ch. 359.

would be necessary if the land were settled as real estate; and the settlor need not be afraid that by adopting this form the land is likely to be sold, for by making the trust for sale exercisable with the consent of the tenants for life, and after their death at the discretion of the trustees, he practically secures that there shall be no sale unless the exigencies of the family make one desirable.

In the case, however, of an old family estate, it is generally wished to make what is called a strict settlement, *i.e.*, to limit it after the decease of the settlor to the first and other sons successively according to seniority in tail male, charged with an annual sum by way of jointure to the wife if she survives her husband, and with portions for the younger sons and daughters of the marriage. The deed should contain proper powers of leasing, and of sale and exchange, and such other powers as the nature of the property may render necessary.

The Act of the 23 & 24 Vict. c. 145, already referred to, contains general provisions as to the exercise of powers of sale and exchange, and the application of the moneys arising from sales and received for equality of exchange under such powers; the object of the Act being to dispense with the insertion of similar provisions in each particular instrument (*m*). It is generable desirable that trustees should be able to ascertain what are their powers and duties in relation to so important a matter as a sale of part of the settled estates without travelling out of their deed, and therefore it is recommended to the practitioner, as a general rule, to continue the insertion in settlements of real estate, of the power of sale and exchange, in the form which has been hitherto adopted. But where the land settled is inconsiderable, or it is otherwise important to save the increased expense of inserting the powers at length, the Act may, it is considered, be relied on without any fear of practical inconvenience arising from such a course.

A clause enabling the trustees to give receipts for the trust money or funds payable or transferable to them, was until lately an essential part of a settlement, whether

Strict  
settlement.

Statutory  
provision  
relating to  
power of  
sale and  
exchange.

Trustees'  
receipt  
clauses now  
unneces-  
sary.

(*m*) See the Act in the Appendix, secs. 1 to 10.

of real or personal estate, but it may be now safely dispensed with (*n*).

As to powers to appoint new trustees.

The power to appoint new trustees is in settlements usually vested in the husband and wife and the survivor of them, and it is therefore necessary, even if the statutory power conferred by the 23 & 24 Vict. c. 145, s. 27, is relied on, to name them in the deed as the donees of the power.

Provision for indemnity of trustees unnecessary.

It was formerly usual to insert in settlements a provision for the indemnity and reimbursement of trustees, but this provision, which was never of much value, is now rendered unnecessary by the 22 & 23 Vict. c. 35, s. 31 (*o*).

Solicitor trustee.

If either of the trustees is a solicitor, a clause enabling him to charge for business done by him in relation to the trusts should not be omitted.

Settlement of property of infants.

The 18 & 19 Vict. c. 43 (explained as extending to Ireland by the 23 & 24 Vict. c. 83), authorises *infants* in contemplation of marriage, with the sanction of the Court of Chancery, to be given on petition without the institution of a suit (if males, at any time after the age of twenty, and if females, at any time after the age of seventeen), to make binding settlements of all or any part of their real or personal property, or property over which they may have any power of appointment. But as to appointments under a power, or any disentailing assurance which may have been executed by the infant tenant in tail under the provisions of the Act, it is pro-

(*n*) See 22 & 23 Vict. c. 35, sec. 23; 23 & 24 Vict. c. 145, sec. 29.

(*o*) The enactment above referred to is as follows: "Every deed, will, or other instrument creating a trust either expressly or by implication shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following: that is to say, 'That the trustees or trustee for the time being of the said deed, will, or other instrument, shall be respectively chargeable only for such moneys, stocks, funds, and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their

own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument to reimburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument.'"

vided that in case the infant dies under twenty-one, such appointment or disentailing assurance shall be absolutely void. Before approving a settlement under this Act, the Court will not direct an inquiry as to the propriety of the contemplated marriage (oo).

II.—*Voluntary settlements, how far valid as against*  
(1) *purchasers*, (2) *creditors*, (3) *the settlor himself and his representatives*.

(1) By the stat. 27 Eliz. c. 4, all conveyances, &c., of lands, tenements, or hereditaments, made with the intent to defraud purchasers, and also all conveyances with any clause of revocation at the grantor's pleasure, are made void against subsequent purchasers. 27 Eliz. c. 4.

It has been long settled that all voluntary deeds are to be deemed fraudulent and void within the meaning of the above statute, and it makes no difference that the subsequent purchaser has notice of the prior voluntary conveyance (p). All voluntary settlements fraudulent under above Act.

The principle on which voluntary conveyances have been uniformly held to be fraudulent and void as against subsequent purchasers appears to be, that by selling the property afterwards for a valuable consideration the vendor so entirely repudiates the former voluntary conveyance, and shows his intention to sell, as that it shall be taken conclusively against him and the person to whom he conveyed, that such intention existed when he made the voluntary conveyance, and consequently that it was made in order to defeat the purchaser (q). This being the principle, it follows that the statute only applies where the voluntary conveyance and the subsequent sale are by the same person, and therefore if A. makes a voluntary conveyance and dies, a sale by the heir of A. will not defeat it (r). But a conveyance which is *really* fraudulent, and not merely voluntary, is void against a subsequent purchaser, although the person Principles on which it has been so held.

(oo) *In re Dalton*, 6 De G. M. & G. 201. *Newman v. Rusham*, 17 Q. B. 723 ; 21 Law J. Q. B. 139.

(p) *Doe d. Otley v. Manning*, 9 East, 59.

(q) *Per Campbell, C. J.*, in *Doe d.*

(r) *Doe d. Newman v. Rusham*, *ubi supra*. See also *Parker v. Carter*, 4 Hare, 409.

Doctrine only applies where settlor and person making voluntary conveyance are the same.

making the fraudulent conveyance, and the person selling may be different (s).

Voluntary conveyance good against purchaser from subsequent voluntary grantee.

A voluntary conveyance is binding on the grantor and on all persons (other than purchasers for valuable consideration) claiming under him. Consequently, if A. makes two voluntary conveyances, first to B. and then to C., and C. sells for valuable consideration to D., B.'s title is good against D., because after A. had conveyed to B., he had no estate left in him which he could convey to any one but a purchaser for value, and as nothing therefore passed to C., D. could be in no better position (t).

Purchaser from voluntary grantee cannot be disturbed

Again, if a person to whom a voluntary conveyance is made, sells and conveys for value, that which was in its creation a voluntary conveyance, and voidable by a purchaser, becomes good and unimpeachable, and the purchaser from such volunteer cannot be disturbed by a subsequent purchaser from the original settlor. It follows that after the execution of a voluntary conveyance a person could not be advised to purchase and take a conveyance of the property from the settlor, as there may have been in the meantime a sale by the person taking under the voluntary deed. And it has been decided that a contract for sale entered into by a person who has executed a voluntary conveyance may be enforced against him, but not by him (u).

Marriage or a valuable consideration sufficient to support ante-nuptial settlements.

Limitations in favour of collateral relations, when supported by the marriage consideration.

Marriage is a valuable consideration, and consequently a settlement made previously to and in consideration of marriage in favour of the husband and wife and their issue is a settlement for valuable consideration, so as to exclude the operation of 27 Eliz. chap. 4. But a settlement made after marriage, unless in pursuance of a prior agreement, or unless there is some other consideration, is voluntary; so also if a marriage settlement contains limitations in favour of collateral relations or strangers, such limitations are *prima facie* voluntary (x), and so is a provision made by an intended

(s) Burrell's Case, 6 Rep. 72.

(t) See Doe d. Newman v.

Rusham, *ubi supra*.

(u) Buckle v. Mitchell, 18 Ves. 100; Smith v. Garland, 2 Mer. 123.

But see Peter v. Nicholls, L. R. 11 Eq. 391.

(x) Johnson v. Legard, T. & R. 281; Cotterell v. Homer, 13 Sim., 506.

husband for his child by a former wife (*y*). But a widow may on her second marriage stipulate for a provision to be made out of her land for a child by a former marriage, or even for an illegitimate child, and a settlement to carry into effect such a stipulation will be good against a subsequent purchaser (*z*). And in a recent case it was held that a covenant by a widow on her second marriage to surrender copyholds upon trusts in favour of her children by a former marriage was enforceable in equity (*a*). So also if a settlement, whether of the husband's or the wife's lands, contains limitations in favour of strangers to the marriage consideration (including in this expression children of a former or of a subsequent marriage), which are so mixed up with limitations in favour of persons within such consideration, that effect cannot be given to the provisions in favour of those within the consideration without giving effect also to those in favour of the strangers, the whole settlement will be upheld (*b*).

As regards post-nuptial settlements a very slight consideration, *e.g.*, a loan of money made to the settlor by a relative of his wife is sufficient to take a case out of the statute (*c*). And a settlement by husband and wife of the wife's property to her separate use for life with remainder to the husband for life with remainder to the children is a settlement for valuable consideration, such consideration being the modification by the husband of his life interest in possession, and by the wife of her inheritance (*d*).

A very slight consideration sufficient to support a post-nuptial settlement.

(2) By the stat. 13 Eliz. c. 5 (made perpetual by the 13 Eliz. c. 5. 29 Eliz. c. 5), all conveyances, &c., of lands, tenements, or hereditaments, goods or chattels (*e*), made with intent to defeat, hinder, or delay creditors, are made void as against such creditors; but the Act contains a saving

(*y*) *Price v. Jenkins*, L. R. 4 C. D. 483.

(*z*) *Newstead v. Searles*, 1 Atk. 264; *Clarke v. Wright*, 6 H. & N. 849.

(*a*) *Gale v. Gale*, L. R. 6 C. D. 144.

(*b*) *Clayton v. Lord Wilton*, 3 Madd. 302, note; *Newstead v. Searles*, *ubi supra*.

(*c*) *Bayspoole v. Collins*, L. R. 6

Ch. 228. See also *Townend v. Toker*, L. R. 1 Ch. 446.

(*d*) *Hewison v. Negus*, 16 Beav. 594; *Teasdale v. Braithwaite*, L. R. 5 C. D. 631; *Re Foster & Lister*, *ib.* 6 C. D. 87.

(*e*) It will be observed that while the stat. 27 Eliz. c. 4, applies only to lands and hereditaments, the stat. 13 Eliz. c. 5, applies to goods and chattels also.



clause in favour of purchasers for valuable consideration without notice.

Voluntary conveyance not necessarily void against creditors.

In order to come within this statute a deed must be made with intent to defeat, hinder, or delay creditors. If such an intent is clear, the deed will be void, even if made for valuable consideration (*f*). A voluntary deed will be presumed to be made with intent to defeat, &c., creditors, if that will be its probable effect having regard to the amount of property included in it, and the amount of the settlor's liabilities at the time (*g*).

Subsequent creditors may come in.

If a deed is set aside as being void against creditors under the statute, the property comprised in it becomes assets for the payment of debts generally, so that subsequent creditors are entitled to participate in it (*h*), or if the settlor contemplated at the time a state of things which might not improbably result in bankruptcy or insolvency, as if he was engaging in a hazardous business (*i*), and a voluntary deed may be set aside at the suit of a subsequent creditor, although there may be no creditor whose debt was in existence at the date of the settlement (*k*).

Reservation of a power to revoke a sign of fraud.

If a settlor reserves to himself a power of revocation, or a general power to mortgage the estate, the reservation of such a power is a sign of fraud, and the deed could not be supported against creditors (*l*).

Settlement where life income made determinable in bankruptcy held fraudulent.

A voluntary settlement by a person not then engaged in trade, and who owed no debts, by which money was settled in trust to pay the income to the husband for life or until bankruptcy, &c., with remainder to his wife for life, for her separate use, with remainder to the children, and an ultimate remainder to the settlor was held fraudulent and void against creditors, the settlor having many years after the settlement engaged in trade and become bankrupt (*m*).

A settlement which is in form voluntary may be

(*f*) *Holmes v. Penney*, 3 K. & J. 90.

(*g*) *Per Kindersley*, V.-C., in *Jenkyn v. Vaughan*, 3 Drew. 424; *Thompson v. Webster*, 4 Drew. 632; S.C. on Appeal, 4 De G. & J. 600.

(*h*) *Richardson v. Smallwood*, Jac. 552.

(*i*) *Mackay v. Douglas*, L. R. 14 Eq. 106.

(*k*) *Mackay v. Douglas*, *ubi supra*; *Taylor v. Coenen*, L. R. 1 C. D. 636.

(*l*) *Tarback v. Marbury*, 2 Vern. 510; *Smith v. Hurst*, 10 Hare, 80.

(*m*) *Re Pearson*, L. R. 3 C. D. 807.

proved by extrinsic evidence to have been made for a valuable consideration (*n*).

The rule by which voluntary settlements are void against creditors is extended, in the case of traders, by the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71, s. 91), which provides that a voluntary settlement by a trader shall, if the settlor becomes bankrupt within two years from the date of the settlement, be void as against the trustee of the bankrupt, and shall, if he becomes bankrupt within ten years after the date of such settlement, be void against such trustee, unless the parties claiming under it can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement; and the Act also provides that any covenant or contract by a trader in consideration of marriage for the future settlement upon or for his wife and children of any money or property wherein he had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee in bankruptcy.

Provisions of Bankruptcy Act, 1869, as to voluntary deeds.

It has been held that this enactment applies to settlements executed before as well as after the Act came into operation (*o*), but that it does not apply to a covenant for payment of a sum of money not specifically earmarked, and where a trader covenanted on his marriage to pay a sum of £6000 to the trustees, and became a bankrupt within two years, his trustees were allowed to prove against his estate under the covenant (*p*).

(3) Equity will not give its assistance to execute a voluntary contract or covenant in respect of real or personal property (*q*). Every voluntary assignment or gift of property must be complete, in order to bind the settlor, *i.e.*, he must have done everything which ac-

Voluntary covenants and settlements are binding on the settlor if complete but not otherwise.

(*n*) *Pott v. Todhunter*, 2 Coll. 718.

(*o*) *Ex parte Dawson*, L. R. 19 Eq. 433.

(*p*) *Ex parte Bishop*, L. R. 8 Ch.

(*q*) *Pulvertoft v. Pulvertoft*, 18 Ves. 99; *Jefferys v. Jefferys*, 1 Cr. & P. 138; *Meek v. Kettlewell*, 1 Ph. 342.

according to the nature of the property is necessary to be done on his part (*r*). Thus, if the legal owner of Consols, standing in his own name (*s*), or of Bank shares transferable only by entry in the bank books (*t*), purports to assign such Consols or Shares by deed, or if a person possessed of leasehold property purports to assign it by a writing not under seal (*u*), or if the owner of shares in a colliery signs an entry in the partnership books, to the effect that he agrees to transfer such shares, which entry is not sufficient to pass them according to the partnership articles (*x*), or if the owner of railway stock hands over the certificate of such stock, saying, "these are yours," or using words to that effect (*y*), in each of these cases the intended gift, if in favour of a volunteer is inoperative. On the other hand, a voluntary assignment by deed of a chose in action not assignable at law (*z*), or of a reversionary interest in stock standing in the name of a trustee (*a*), will be sustained, on the ground that the assignor has done all that he can, having regard to the nature of the property, to divest himself of his interest, nor is it necessary that notice of the assignment shall have been given to the debtor or the trustee, the giving of such notice being an act within the province of the assignee rather than the assignor.

Voluntary declaration of trust good, but instruments void as incomplete assignments not good as declarations of trust.

A voluntary declaration of trust, whether of real or personal property, will be enforced, and as regards personal property such declaration may be either in writing or by a parol (*b*). In some cases it has been sought to sustain as valid declarations of trust, instruments purporting to be assignments, but which are incomplete as such. The principle applicable to such cases has been thus laid down by Turner, V.-C., in *Milroy v. Lord* (*c*), "If the settlement is intended to be effectuated by one of the modes to which I have

(*r*) *Milroy v. Lord*, 4 De G. F. & J. 264.

(*s*) *Bridge v. Bridge*, 16 Beav. 315; *Beach v. Keep*, 18 Beav. 285.

(*t*) *Milroy v. Lord*, *ubi supra*.

(*u*) *Richards v. Delbridge*, L. R. 18 Eq. 11.

(*x*) *Heartley v. Nicholson*, L. R. 19 Eq. 233.

(*y*) *Moore v. Moore*, L. R. 18 Eq. 474.

(*z*) *Fortescue v. Barnett*, 3 M. & K. 36.

(*a*) *Kekewich v. Manning*, 1 De G. M. & G. 176.

(*b*) *Ex parte Pye*, 18 Ves. 150.

(*c*) 4 De G. F. & J. 274.

referred (viz., transfer and declaration of trust), the Court will not give effect to it by applying another of those modes. If it is intended to take effect by transfer, the Court will not hold the intended transfer to operate as a declaration of trust, for then every imperfect instrument would be made effectual by being converted into a perfect trust (*d*).

In order to support a voluntary deed against the settlor, the parties claiming under it must be able to show that he understood what he was doing, and this is particularly the case if the settlor was young or otherwise inexperienced in business at the time when he made the settlement, or if the deed contains unusual provisions (*e*). It has been sometimes supposed to be the duty of the solicitor who prepares a voluntary deed to advise the insertion of a power of revocation in all cases, and that the want of such a power, unless by the express direction of the solicitor, invalidates the deed (*f*). But there is no such general rule. It depends on the circumstances, whether such a power should be recommended or not; in many cases it would be proper, while in others it would defeat the very object with which the deed is executed (*g*). All that the Court has to be satisfied of is that the settlement whether it contains a power of revocation or not, is the free determined act of the party making it, and the absence of advice as to the insertion of a power of revocation is a circumstance, and a circumstance merely, to be weighed in connection with the other circumstances of the case (*h*).

Duty of solicitor who prepares a voluntary deed.

### III. *Stamps on settlements.*

By the 33 & 34 Vict. c. 97, the following stamp duties Stamps on settlements.

(*d*) See also *Warriner v. Rogers*, L. R. 16 Eq. 340; *Richards v. Delbridge*, 18 Eq. 11; *Moore v. Moore*, *ib.* 474. The cases of *Airey v. Hall*, 3 Sm. & Gif. 315; *Richardson v. Richardson*, L. R. 3 Eq. 686; *Morgan v. Malleon*, *ib.* 10 Eq. 475, must be considered as overruled.

(*e*) *Cooke v. Lamotte*, 15 Beav. 235; *Prideaux v. Lonsdale*, 1 D. J. & S. 433; *Phillips v. Mullings*, L. R.

7 Ch. 244.

(*f*) *Countts v. Acworth*, L. R. 8 Eq. 558; *Wollaston v. Tribe*, 9 Eq. 44; *Everitt v. Everitt*, 10 Eq. 405.

(*g*) *Prideaux v. Lonsdale*, 1 D. J. & S. 433; *Toker v. Toker*, 3 D. J. & S. 487; *Hall v. Hall*, L. R. 8 Ch. 430.

(*h*) Per *Turner*, L. J., in *Toker v. Toker*, 3 D. J. & S. 491.

are made payable under the head of "settlement" in the schedule :—

Any instrument, whether voluntary, or upon any good or valuable consideration, other than a bonâ fide pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled, or agreed to be settled, in any manner whatsoever.

£ s. d.

For every £100, and also for any fractional part of £100, of the amount or value of the property settled, or agreed to be settled...	0	5	0
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*Exemption.*

Instrument of appointment relating to any property in favour of persons specially named or described as the objects of a power of appointment created by a previous settlement, stamped with *ad valorem* duty in respect of the same property, or by will, where probate duty has been paid in respect of the same property as personal estate of the testator.

As settlements frequently contain covenants for payment of an annuity, it will be useful to mention that under the same Act a bond, covenant, or other instrument for payment of an annuity, is charged as follows :—

- (1) Being the only or principal security for the payment of any annuity (except upon the original creation and sale thereof), or of any sum or sums of money at stated periods, not being interest for any principal

sum, secured by a duly stamped instrument, nor rent reserved by a lease or tack:

For a definite and certain period, so that the total amount to be ultimately payable can be ascertained. } The same *ad valorem* duty as a bond or covenant for such total amount.

For the term of life, or any other indefinite period:

	£	s.	d.
For every £5, and also for any fractional part of £5 of the annuity or sum periodically payable.....	0	2	6
(2) Being a collateral, or auxiliary, or additional or substituted security for any of the above-mentioned purposes where the principal or primary instrument is duly stamped :			

Where the total amount to be ultimately payable can be ascertained. } The same *ad valorem* duty as a bond or covenant of the same kind for such total amount.

In any other case:

For every £5, and also for any fractional part of £5 of the annuity or sum periodically payable .....	0	0	6
---	---	---	---

And the Act contains the following provisions relating to stamps on settlements :—

Sect. 124. Where any money which may become due or payable upon any policy of insurance, or upon any security not being a marketable security, is settled or agreed to be settled, the instrument whereby such settlement is made or agreed to be made, is to be charged with *ad valorem* duty in respect of such money. Settlement of policy, or security.

Provided as follows :—

- (1) Where in the case of a policy of insurance no provision is made for keeping up the policy, the *ad valorem* duty is to be charged only on the value of the policy at the date of the instrument. Provide as to policies.
- (2) If in any such case the instrument contains a statement of such value, and is stamped in accordance with such statement, it is, so far as regards such policy, to be

deemed duly stamped, unless or until it is shown that such statement is untrue, and that the instrument is in fact insufficiently stamped.

Settlements  
when not to  
be charged  
as securities.

Sect. 125. (1) An instrument chargeable with *ad valorem* duty as a settlement in respect of any money, stock, or security, is not to be charged with any further duty by reason of containing provision for the payment or transfer of the same money, stock, or security.

(2) Where any money, stock, or security is settled, or agreed to be settled, by a person who has only a reversionary interest therein, and the instrument whereby such settlement is made, or agreed to be made, contains a covenant by the person entitled in possession to the interest or dividends of such money, stock, or security, for the payment, during the continuance of such possession, of any annuity or yearly sum not exceeding interest at the rate of £4 per cent. per annum upon the amount or value of such money, stock, or security, such instrument shall not be charged with any duty in respect of such covenant.

Where  
several  
instru-  
ments, one  
only to be  
charged  
with *ad  
valorem*  
duty.

Sect. 126. (1) Where several instruments are executed for effecting the settlement of the same property, and the *ad valorem* duty chargeable in respect of the settlement of such property exceeds ten shillings, one only of such instruments is to be charged with the *ad valorem* duty.

(2) Where a settlement is made in pursuance of any previous agreement or articles upon which any *ad valorem* settlement duty exceeding ten shillings has been paid in respect of the same property, such settlement is not to be charged with the *ad valorem* duty.

(3) In each of the aforesaid cases, the instruments not chargeable with *ad valorem* duty are to be charged with the duty of ten shillings.

## No. I.

SETTLEMENT of a SUM of STOCK belonging to the intended HUSBAND, the INCOME to be paid to the HUSBAND and WIFE, successively for life, and after the death of the SURVIVOR, the principal to be for the ISSUE, as the HUSBAND and WIFE, or the SURVIVOR, shall appoint, and in default of APPOINTMENT for SONS attaining twenty-one Years, and DAUGHTERS attaining that age or marrying, equally; HOTCHPOT clause; MAINTENANCE, ACCUMULATION, and ADVANCEMENT clauses; TRUST in default of CHILDREN; Clauses as to INVESTMENTS and appointing NEW TRUSTEES.

OF STOCK  
BELONGING  
TO INTENDED  
HUSBAND.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of,

&c., and I. K. of, &c. (*trustees*) (a), of the third part: WHEREAS a marriage has been agreed upon and is intended shortly to be

Recital of  
intended  
marriage.

solemnised between the said A. B. and the said C. D.: AND WHEREAS upon the treaty for the said intended marriage it was

Agreement  
to settle  
stock.

agreed that the said A. B. should settle the sum of £—— £3 per Cent. Consolidated Bank Annuities upon the trusts, and in the

manner hereinafter expressed, and he has accordingly, with a view to such settlement, transferred the said stock into the

Transfer of  
stock to  
trustees.

names of the said E. F., G. H., and I. K., in the books of the Governor and Company of the Bank of England: NOW THIS

Witnessing  
part.

INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED

that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such

Trustees  
shall stand  
possessed of  
stock, in  
trust for  
intended  
husband  
until mar-  
riage.

survivor or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"),

shall stand possessed of the said sum of £—— £3 per Cent. Consolidated Bank Annuities transferred into their names as

(a) The number of trustees in a settlement varies from two to four. In the above Precedent there are three, but it can be easily adapted to the case of two or four trustees.



OF STOCK  
BELONGING  
TO INTENDED  
HUSBAND.

After mar-  
riage to  
retain  
present in-  
vestment, or  
change  
same.

To pay  
income to  
husband  
and wife  
successively  
for life,  
in trust for  
the issue of  
marriage,  
as husband  
and wife or  
survivor  
shall  
appoint.

And in  
default of  
any appoint-  
ment for  
sons attain-  
ing twenty-  
one, and  
daughters]  
attaining  
that age or  
marrying  
under that  
age, equally.  
Hotchpot  
clause.

aforesaid: IN TRUST for the said A. B., until the said intended marriage: AND afterwards shall either retain the said stock, or at any time, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees or trustee, sell the same, and invest the moneys produced by such sale in some or one of the modes of investment hereafter authorised, with power from time to time with such consent, or at such discretion as aforesaid, to vary the said investments into or for others of the same or a like nature, and shall stand possessed of the said sum of £——£3 per Cent. Consolidated Bank Annuities, and the investments for the time being representing the same (hereinafter called the trust funds): IN TRUST to pay the income thereof to the said A. B. during his life, and after his decease to the said C. D. during her life, and after the decease of the survivor of the said A. B. and C. D., IN TRUST for such child, children, or remoter issue (b) of the said intended marriage, at such age or time, or ages or times (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said A. B. and C. D. shall by any deed or deeds jointly appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, then as the survivor of them the said A. B. and C. D. shall by any deed or deeds, or by his or her will, appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said intended marriage who, being sons, shall attain the age of twenty-one years, or, being daughters, shall attain that age or marry under that age, in equal shares, and if there shall be but one such child, then the whole to be in trust for such one child: BUT so, nevertheless, that no child who or any of whose issue shall take any part of the trust funds under any such appointment as aforesaid shall be entitled to any share of the unappointed part of the trust funds, without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the persons or person making

(b) This power is good, although the class is not limited in terms to issue born within the period allowed by the rule against perpetuities, but it must be exercised consistently with that rule. *Routledge v. Dorrill*, 2 Ves. Jr. 357.

such appointment shall thereby direct the contrary: AND if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, IN TRUST for the said A. B., his executors, administrators, and assigns: PROVIDED ALWAYS, that [if at the decease of the survivor of the said A. B. and C. D., any child or remoter issue entitled for the time being in expectancy to a share of the trust funds under these presents or under any appointment to be made as aforesaid, shall be under the age of twenty-one years, then and in every such case, and in default of any appointment to the contrary, the trustees or trustee may pay and apply the whole or such part as they or he shall think fit of the income of the expectant share of such minor, for or towards his or her maintenance or education, with liberty for the trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof, and shall invest the residue (if any) of the said income, and the resulting income thereof, so as to accumulate at compound interest, to the intent that such accumulations shall be added to the principal share from which the same shall have arisen and follow the destination thereof: BUT the trustees or trustee may at any time resort to the accumulations of a preceding year or years, and apply the same for or towards the maintenance or education of any child or remoter issue for the time being presumptively entitled thereto (c): PROVIDED ALSO, that] the trustees or trustee may at any time or times, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees or trustee, raise any part or parts not exceeding together one moiety of the vested or expectant share of any child or remoter issue of the said intended marriage under these presents, or under any such appointment as aforesaid, and may either pay the moneys to be so raised as aforesaid to such child or remoter issue, or otherwise apply the same for his or her advancement, preferment, or benefit, as the trustees or trustee with such consent or at such discretion as aforesaid think fit: AND IT IS ALSO AGREED AND

OF STOCK  
BELONGING  
TO INTENDED  
HUSBAND.

Main-  
tenance  
clause.

Accumula-  
tion clause.

Advanco-  
ment clause.

(c) The maintenance and accumulation clause as inserted within brackets may safely be omitted, and it is accordingly omitted in subsequent Precedents. See p. 184, *supra*.

OF STOCK  
BELONGING  
TO INTENDED  
HUSBAND.

Investment  
clause.

DECLARED (d), that all moneys liable to be invested under these presents may be invested in or upon any stocks, funds, or securities of or guaranteed by the Government of the United Kingdom or of any British colony or dependency (including the stocks or securities of any railway or other company in India or elsewhere, having a fixed rate of interest thereon guaranteed as aforesaid), or in stock of the Bank of England, or the debentures or debenture stock or guaranteed or preference stock or shares of any railway or other company in

(d) There is considerable variety of practice as to the range of the power of investment inserted in settlements and wills. Some persons are in favour of a very comprehensive power, confiding in the discretion of the trustees to reject what may appear an unsafe investment, although within the class authorized. On the other hand, a prudent man will often decline to accept a trust which authorizes investments of a speculative character, and such as cannot, as a general rule, be advised as proper for trust money, feeling that, if he has such a power, he may not improbably be requested by a tenant for life, desiring a high rate of interest, to exercise it, and will be thus placed in the unpleasant alternative of either giving offence to his friend, or imperilling the interests of his *cestuis que trust*. On the whole, it is thought that the best form of power is one which embraces a wide range of investments producing fixed rates of interest, and generally considered of a safe character, but which prohibits those of a speculative character and fluctuating value, such as the ordinary stocks or shares of railway companies. The power in the text is recommended for general adoption, in the absence of special instructions; but two other forms are given below, to meet the requirements of those who prefer a very restricted or a very comprehensive power :—

Other form  
of power of  
investment.

1. In or upon any stocks, funds, or securities authorized by law as investments for trust moneys.

2. In or upon any stocks, funds, or securities of or guaranteed by the Government of the United Kingdom or of any British colony or dependency, or of any foreign state, or in or upon any stock, shares, or securities of any railway or other company, whether in the United Kingdom or in any British colony or dependency, or in any foreign country, or upon the securities of any municipal or other corporation or public body, or upon real or heritable or leasehold securities in any part of the United Kingdom, or in any British possession, or upon the security of any life interest in real or personal property, together with a policy or policies of assurance on the life or lives of the person or persons for whose life or lives such interest is holden (e).

(e) For a power to invest in purchase of land, see Precedent No. IX. *infra*.

Great Britain incorporated by Act of Parliament or Royal Charter and paying a dividend on its ordinary stock or shares or any debentures or debenture stock issued under the Local Loans Act, 1875, or upon real or leasehold securities in England or Wales, but not elsewhere, such leasehold securities being held for a term whereof sixty years at least shall be unexpired at the time of such investment: AND in lending money on any mortgage security the trustees or trustee may accept whatever title or evidence of title shall appear to them or him sufficient, and in particular may in the case of leasehold securities waive the production of the lessor's title (*f*), without being answerable for any loss arising thereby; and the trustees or trustee may at any time release any part of the property comprised in any mortgage security upon being satisfied that the remaining property comprised therein is a sufficient security for the money owing thereon. [And the trustees or trustee may also, if they or he think fit, lend money on any such security as aforesaid, in conjunction with money advanced by any other person or persons by way of contributory loan, and in such case the security may be taken in the joint names of the several contributories or any two or more of them, or in the joint names of any two or more persons to be nominated in that behalf by the several contributories, or such other arrangement may be made in relation thereto as the trustees or trustee may think fit] (*g*). AND IT IS ALSO DECLARED (*h*), that the power of appointing new trustees

OF STOCK  
BELONGING  
TO INTENDED  
HUSBAND.

Power to  
lend on  
contribu-  
tory mort-  
gages.

Power to  
appoint new  
trustees.

(*f*) The rules enacted by the Vendor and Purchaser Act, 1874, regulating the obligations and rights of vendor and purchaser, are not in terms extended to mortgagor and mortgagee.

(*g*) This power of lending on contributory mortgages will be inserted or not, as in each case may be thought desirable.

(*h*) It is considered that the statutory power may safely be relied on in ordinary cases, but if it is preferred to insert in the deed an express power the following may be substituted for the clause in the text:—

AND IT IS ALSO DECLARED, that if and so often as any of the trustees hereby appointed, or any future trustee or trustees of these presents shall die, or go to reside abroad, or shall desire to retire from or refuse or become incapable to act in the trusts of these presents, it shall be lawful for the said A. B. and C. D. during their joint lives, and for the survivor of them during his or her life, and after the decease of such survivor, for the continuing trustees or trustee for the time being of these presents, or if there shall be no continuing trustees, then for the

OF STOCK  
BELONGING  
TO INTENDED  
HUSBAND.

Power to  
solicitor  
trustee to  
charge.

Settlement  
to be void  
if marriage  
is not  
solemnised  
within  
twelve  
months

conferred by Statute shall, for the purposes of these presents, be vested in the said A. B. and C. D. during their joint lives, and in the survivor of them during his or her life, and upon any appointment under the said statutory power the number of trustees may be altered, provided that it be not reduced below two; and if at any time the number of trustees shall (by death or otherwise) be reduced to one, a new trustee or new trustees shall be appointed as soon as conveniently can be, but in the meantime and until such appointment all acts of the sole trustee shall be valid and effectual. AND IT IS ALSO DECLARED (i), that the said E. F. and any future trustee of these presents, who may be a solicitor, shall be entitled to charge and shall be paid out of the trust premises for all business done by him in relation to the trust premises in like manner as he would have been entitled to charge the trustees for the same if not being himself a trustee he had been employed by them to do such business as their solicitor. PROVIDED ALWAYS, and it is lastly declared, that if the said intended marriage shall not be solemnised within twelve calendar months from the date hereof these presents shall be void, and the stock hereby settled shall be re-transferred to the said A. B.

IN WITNESS, &c.

---

retiring or refusing trustees or trustee, or the executors or administrators of the last acting trustee, to appoint any other person or persons to be a trustee or trustees, in the place of the trustee or trustees so dying, or going to reside abroad, or desiring to retire, or refusing or becoming incapable to act as aforesaid, with liberty upon any such appointment to alter the number of trustees, but so that it be not reduced below two: AND UPON every such appointment the trust funds hereby settled shall be so transferred as to become vested in the new trustee or trustees, either jointly with the continuing trustees or trustee, or solely as the case may require: AND EVERY such new trustee (as well before as after the said trust premises shall have become vested in him) shall have all the powers and authorities of the trustee in whose place he shall be substituted.

(i) This clause will be inserted if one of the trustees is a solicitor.

## No. II.

SETTLEMENT of STOCK *belonging to the intended* OF STOCK BELONGING TO WIFE.  
 WIFE, *the INCOME to be paid to the WIFE for her*  
*life for her separate use, and after her death to the*  
 HUSBAND; TRUSTS for ISSUE and USUAL CLAUSES;  
 AGREEMENT for settling other PRESENT and FUTURE  
 PROPERTY of the WIFE, POWER to invest in PUR-  
 CHASE of LAND.

THIS INDENTURE, made the — day of — 18—, BE- Parties.  
 TWEEN A. B. of, &c. (*intended husband*), of the first part, C. D.  
 of &c. (*intended wife*), of the second part, and E. F. of, &c.,  
 G. H. of, &c., I. K. of, &c. (*trustees*), of the third part: WHEREAS Recital of intended marriage.  
 a marriage has been agreed upon, and is intended shortly to be  
 solemnised between the said A. B. and the said C. D.: AND Agreement for settle- ment.  
 WHEREAS, upon the treaty for the said intended marriage it was  
 agreed that the sum of £—— £3 per Cent. Consolidated Bank  
 Annuities belonging to the said C. D., and such other present  
 and future property (if any) of the said C. D. as is hereinafter  
 in that behalf mentioned, should be respectively settled upon  
 the trusts and in the manner hereinafter expressed: AND for Transfer of stock to trustees.  
 the purposes of the said intended settlement the said C. D. has  
 transferred the said stock into the names of the said E. F.  
 and G. H., in the books of the Governor and Company of  
 the Bank of England: NOW THIS INDENTURE WITNES- Witnessing part.  
 SETH, that in consideration of the said intended marriage, It  
 IS HEREBY AGREED AND DECLARED, that the said E. F., G. H.,  
 and I. K., and the survivors and survivor of them, and Trustees to hold stock in trust for wife until marriage.  
 the executors or administrators of such survivor, or other the  
 trustees or trustee for the time being of these presents (herein-  
 after called “the trustees or trustee”) shall stand possessed of  
 the said sum of £—— £3 per Cent. Consolidated Bank  
 Annuities until the said intended marriage, IN TRUST for the  
 said C. D., and from and after the said marriage, shall (*retain*  
*stock, or sell and invest, and vary investments, vide supra, p.*  
*202*), and shall stand possessed of the said sum of £—— £3  
 per Cent. Consolidated Bank Annuities, and the investments

OF STOCK  
BELONGING  
TO WIFE.

To pay  
income to  
wife for  
life for her  
separate use  
without  
power of  
anticipation  
and then to  
husband for  
life and  
after death  
of survivor  
for issue.

In default of  
issue, then  
as wife shall  
by will  
appoint;  
and in  
default of  
appoint-  
ment for  
wife if she  
survives

for the time being representing the same (hereinafter called "the trust funds"), IN TRUST (a) to pay the income thereof to the said C. D. during her life, and so that during her coverture the same shall be for her sole and separate use, and she shall not have power to dispose thereof in the way of anticipation, and after the decease of the said C. D., IN TRUST to pay the said income to the said A. B. (if then living) during his life, and from and after the decease of the survivor of the said A. B. and C. D., IN TRUST, &c. (*Trusts for issue as husband and wife or survivor shall appoint, and in default of appointment for children, equally—sons at twenty-one and daughters at twenty-one or marriage,—Hotchpot clause, supra, p. 202.*): AND if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then UPON SUCH TRUSTS (b) as the said C. D. shall by her will, notwith-

(a) It is usual to give the wife, for her separate use, the whole income of property settled by her, but sometimes it is arranged that she shall receive an annual sum only out of such income. In such a case the following trusts of income will be substituted for those in the text :—

To pay  
annuity to  
wife during  
joint lives,  
and residue  
of income to  
husband.

IN TRUST that the trustees or trustee shall pay to the said C. D. during the joint lives of the said A. B. and C. D. the annual sum of £— for her sole and separate use by way of pin money, and so that she shall not have power to dispose thereof in the way of anticipation, the said annual sum to be paid by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months next after the solemnization of the said intended marriage: AND if the said C. D. shall die on any day not being one of the said half-yearly days of payment, there shall be no apportionment of the current half-yearly payment; and the trustees or trustee shall during such joint lives as aforesaid pay the surplus of the said income to the said A. B.: AND shall after the decease of such one of them the said A. B. and C. D. as shall die first, pay the whole of the income of the trust funds to the survivor of them during his or her life: AND after the decease of such survivor shall stand possessed of the trust funds, IN TRUST, &c. (*as in text*).

(b) It is not right to omit this testamentary power where the money settled belongs to the intended wife herself, except at her own wish, after having had the matter fully explained to her. But if the money is settled by her father, or some other relation, he may fairly stipulate that she shall

standing her coverture appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the said C. D., her executors, administrators, and assigns, if she shall survive her now intended coverture (c): BUT if she shall die during her now intended coverture, then IN TRUST for the person or persons who under the statutes for the distribution of the effects of intestates would on the decease of the said C. D. have been entitled thereto if she had died possessed thereof intestate and without having been married, such persons, if more than one, to take as tenants in common in the shares in which the same would have been divisible between them under the same statutes (*Advancement clause, p. 203*): AND IT IS HEREBY AGREED AND DECLARED (d) that all real and personal property (if any) not hereinbefore settled, to which the said C. D. at the time of the said intended marriage, or she or the said A. B. in her right at any time during her now intended coverture, shall be or become entitled, whether in possession, reversion, or otherwise (except jewels, trinkets, ornaments of the person, plate, linen, china, furniture, pictures, prints, books, and articles of the like nature, and except also any legacy or other property acquired at one and the same time, not exceeding in amount or value the sum of £200 (e) all which excepted premises it is hereby declared shall belong to the said C. D. for her sole and separate use) shall, so soon as circumstances will admit, and at the cost of the trust estate, be assured and transferred by the said A. B. and C. D. respectively, and all other necessary and proper parties (if any) unto or otherwise vested in the trustees or trustee, UPON TRUST, that the trustees or trustee shall at such

OF STOCK  
BELONGING  
TO WIFE.

Agreement  
for settling  
other  
present and  
future  
property of  
intended  
wife.

not have a power of giving it away from the family, and in such case the power may either be omitted altogether, or a more limited power given. The following is the form of a more limited power, "In trust for such person or persons, being a brother, or sister, brothers or sisters, or the issue of a brother or sister, or of brothers or sisters of the said C. D., as she the said C. D., &c."

(c) In a case where in a settlement made on the marriage of a ward of court, the fund was given in default of children as the wife should by will appoint, and in default of appointment to her next of kin, and the wife survived her husband, the settlement was rectified on her unsupported evidence that it was contrary to her intention, by limiting the fund in the event which had happened to her absolutely. *Smith v. Iliffe*, L. R. 20 Eq. 666; see also *Cogan v. Duffield*, *ib.* 789.

(d) As to the construction of covenants to settle after-acquired property, see *supra*, p. 186.

(e) £200 is the sum usually fixed, but in many cases a higher sum would appear more reasonable.



OF STOCK  
BELONGING  
TO WIFE.

time or times, and in such manner as they or he shall think fit (but as to reversionary property not until it shall fall into possession), sell or call in and convert into money such part or parts of the said property as shall not consist of money or of investments of the nature hereinafter authorized, and shall stand possessed of such part of the said property as shall consist of authorized investments, or of money uninvested, and also of the moneys to arise from such sale, calling in, and conversion as aforesaid, upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the trust funds and the moneys to arise from the sale and conversion into money thereof (*f*): AND in the meantime, and so long as any property hereinbefore directed to be sold shall remain unsold, shall pay the rents and income thereof to the person or persons and in the manner to whom and in which the income of the trust funds shall for the time being be payable or applicable under the foregoing trusts (*g*): PROVIDED ALWAYS, that if any property to become vested in the trustees or trustee as aforesaid shall consist of an annuity or of the rents or income of real or personal property payable to the said C. D. during her life or the life or lives of any other person or persons only, or for any term or period determinable on her death, or on the death of any other person, such annuity, rents, or income shall not be sold unless the said C. D. shall by writing direct the sale thereof, but the said annuity, rents, or income shall, unless and until the same shall be sold, be paid and applied to the persons and in the manner to whom and in which the income of the trust funds shall for the time being be payable or applicable under the foregoing trusts (*g*): AND IT IS HEREBY DECLARED, that, &c. (*Investment clause and appointment of new trustees, supra*, pp. 204, 205): PROVIDED ALWAYS, and it is LASTLY DECLARED, that if the said intended marriage shall not be solemnised within twelve calendar months after the date of these presents, these presents shall be void, and the stock hereby settled shall be re-transferred to the said C. D.

Settlement  
to be void if  
marriage  
not solemn-  
ised within  
twelve  
months.

IN WITNESS, &c.

(*f*) If the wife only receives an annuity out of the income of the wife's trust funds, add here, "but so as not to increase the said annuity of £— hereinbefore made payable to the said C. D. during the joint lives of the said A. B. and C. D."

(*g*) Add here, if required, "but so as not to increase the said annuity."

## No. III.

SETTLEMENT of a POLICY of ASSURANCE (a) effected on the LIFE of the intended HUSBAND; Provision enabling him to PAY to the TRUSTEES a SUM equal to the POLICY in which case the POLICY is to be held in TRUST for him absolutely; COVENANTS by the HUSBAND for keeping up the insurance.

SETTLEMENT  
OF A  
POLICY OF  
ASSURANCE  
EFFECTED  
ON THE LIFE  
OF THE  
INTENDED  
HUSBAND.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part; WHEREAS a marriage is intended shortly to be solemnised between the said A. B. and the said C. D.: AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said A. B. should effect an insurance on his life in the sum of £—, and should settle the same upon the trusts and in the manner hereinafter expressed, and accordingly the said A. B. hath effected an assurance on his life for the sum of £— with the — Assurance Society, by a policy dated the — day of — numbered —, under the annual premium of £—. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, THE said A. B. doth hereby assign unto the said E. F. and G. H., their executors, administrators, and assigns, THE hereinbefore recited policy of assurance, and the said sum of £— thereby assured, and all other moneys to become payable thereunder by way of bonus or otherwise, and all the right, title, interest, claim and demand whatsoever, of him the said A. B., in and to the said policy, To HOLD the said policy and premises unto the said E. F. and G. H., their executors, administrators, and assigns, IN TRUST for the said A. B. until the said intended marriage, AND FROM AND AFTER the said marriage, UPON TRUST that the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of

Parties.

Marriage  
agreed on.

Agreement  
to settle  
policy.

Witnessing  
part.

Assignment  
of policy, to  
trustees.

(a) See 30 & 31 Vict. c. 144.

SETTLEMENT  
OF A  
POLICY OF  
ASSURANCE  
EFFECTED  
ON THE LIFE  
OF THE  
INTENDED  
HUSBAND.

For settlor  
until  
marriage,  
and after  
marriage to  
receive and  
invest policy  
moneys  
when  
payable.

Trusts for  
husband,  
wife and  
issue.

Advance-  
ment clause.  
Covenants  
by husband  
to keep up  
policy ;

to effect new  
policy if  
it shall  
become  
void ;

to pay  
premiums ;

to deliver  
receipts.  
Proviso  
relieving  
trustees  
from  
responsi-  
bility as to  
policy.

these presents (hereinafter called "the trustees or trustee,") shall upon the death of the said A. B. receive the moneys to become payable under the said policy, and with the consent in writing of the said C. D. if then living, or if she shall be then dead, at the discretion of the trustees or trustee, invest the said moneys or so much thereof as shall remain after paying the expenses of and incidental to the obtaining payment of the same in their or his own names or name in or upon, &c. (*Trusts for investment and varying investments supra*, p. 202). AND SHALL stand possessed of the said policy moneys, and the investments for the time being representing the same (hereinafter called "the trust funds") : IN TRUST to pay the income thereof to the said C. D., if she shall survive the said A. B. during her life : AND AFTER THE DECEASE of the survivor of the said A. B. and C. D., IN TRUST, &c. (*Trust for issue as husband and wife or survivor shall appoint, and in default of appointment, for children equally—sons at twenty-one, and daughters at twenty-one, or marriage,—Hotchpot clause,—Ultimate trust in default of issue for husband, supra*, pp. 202, 203) : PROVIDED ALSO, that the trustees or trustee may at any time or times with the consent in writing of the said C. D. during her life, or after her decease at their or her own discretion, raise, &c. (*Advancement clause*, p. 203) : AND the said A. B. doth hereby covenant with the said E. F. and G. H., their executors and administrators, that he the said A. B. will not at any time do any act or commit any default whereby the said policy of assurance may be rendered void or voidable or an increased premium thereon become payable, and will, in case at any time the said policy or any new policy to be effected as hereinafter mentioned, shall by any means become void, forthwith at his own cost effect a new policy on his life in lieu of such void policy, in the names or name of the trustees or trustee in the sum of £—— at least, and will duly and regularly pay the premiums and other sums of money (if any) which shall from time to time become payable for keeping on foot the said policy hereby assigned, and every or any such new policy as aforesaid, and will on demand deliver to the trustees or trustee the receipt for every such premium : PROVIDED ALWAYS that it shall not be obligatory on the trustees or trustee to enforce the performance of any of the covenants hereinbefore contained on the part of the said A. B. in reference to the said policy of assurance, unless they or he shall think fit so to do, nor

shall it be considered a breach of trust for the trustees or trustee to permit the said covenants to remain unperformed, or to permit any such policy as aforesaid to become void through any means whatsoever: AND IT IS AGREED AND DECLARED that if any bonus shall at any time hereafter be declared on the said policy, and an option shall be given to the holder of the said policy either to have the amount of such bonus added to the sum assured by the said policy, or to have the same applied in reduction of the future premiums payable for keeping on foot the said policy, then and in such case the trustees or trustee shall exercise such option in such manner as the said A. B. shall direct, and if any such bonus shall be accepted, and the said A. B. shall at any time afterwards request the trustees or trustee to surrender the same to the said assurance office in consideration of a reduction of future premiums, then and in every such case the trustees or trustee shall comply with such request and act accordingly (b): PROVIDED ALSO, and it is hereby agreed and declared, that it shall be lawful for the said A. B. at any time during his life to redeem the said policy of assurance by paying to the trustees or trustee the sum of £—— sterling, and in such case the said policy shall be re-assigned to the said A. B. at his expense freed and discharged from the trusts, powers, and provisions hereinbefore declared and contained concerning the same and the trustees or trustee shall stand possessed of the said sum of £—— sterling paid to them or him by the said A. B. as aforesaid upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the moneys to be received by virtue of the said policy of assurance, but so that during the joint lives of the said A. B. and C. D., and the life of the survivor of them, every investment or variation of investment of the said sum of £—— be made with their, his, or her consent in writing, and that the income of the said sum of £—— and the stocks, funds, and securities in or upon which the same shall be invested, shall be paid to the said A. B. during his life, and so also that the power hereinbefore contained enabling the trustees or trustee to apply moneys for the advancement of any child, or remoter issue of the said intended marriage, may be exercised during the joint lives of the said A. B. and C. D., or

SETTLEMENT  
OF A  
POLICY OF  
ASSURANCE  
EFFECTED  
ON THE LIFE  
OF THE  
INTENDED  
HUSBAND.

Power to  
settlor to  
accept  
reduction of  
premium in  
lieu of  
bonus,

Power to  
husband to  
pay to  
trustees a  
sum of  
money in  
redemption  
of policy.  
Trusts of  
money to be  
so paid.

(b) This proviso must not be considered as a common form in a settlement of a policy of assurance. It is supposed to have been specially stipulated for in this particular case.

SETTLEMENT  
OF A  
POLICY OF  
ASSURANCE  
EFFECTED  
ON THE LIFE  
OF THE  
INTENDED  
HUSBAND.

Settlement  
to be void  
if marriage  
not solemn-  
ised within  
twelve  
months.

the life of the survivor of them, by their, his, or her direction in writing (*Investment and appointment of new trustees clauses, supra*, pp. 204, 205): PROVIDED ALWAYS, and it is hereby lastly declared, that if the said intended marriage shall not be solemnised within twelve calendar months from the date of these presents, then and in such case these presents shall be void; and the said policy of assurance shall be re-assigned to the said A. B for his absolute use.

IN WITNESS, &c.

#### No. IV.

APPOINT-  
MENT OF  
SHARE TO  
DAUGHTER

#### APPOINTMENT by FATHER and MOTHER to a DAUGHTER of a SHARE of SETTLED PERSONAL ESTATE in CONTEMPLATION of MARRIAGE.

Recital of  
settlement  
on marriage  
of father  
and mother  
of intended  
wife.

TO ALL TO WHOM THESE PRESENTS SHALL COME, M. D. of, &c., and N., his wife (*father and mother of intended wife*), SEND GREETING: WHEREAS by an indenture dated, &c., and made between, &c. (being the settlement made in contemplation of the marriage then intended, and which was shortly afterwards solemnised, between the said M. D. and N., his wife, then N. O.), IT WAS AGREED AND DECLARED that the said (*trustees of that settlement*) should stand possessed of the trust funds therein mentioned, upon the trusts therein declared, during the lives of the said M. D. and N. O. and the life of the survivor of them, and after the decease of such survivor, IN TRUST for all or such one or more of the children and remoter issue of the said intended marriage, at such ages or times, age or time, in such shares, if more than one upon such conditions, and in such manner, as the said M. D. and N. O. should by any deed or deeds jointly appoint: AND WHEREAS the funds subject to the trusts

Present  
state of  
settled trust  
funds.

of the said indenture of settlement now consist of the following particulars (that is to say), the sum of £—— £3 per Cent. Consolidated Bank Annuities, standing in the names of W. X. and Y. Z., the present trustees of the said indenture, in the books of the Governor and Company of the Bank of England, and the sum of £—— sterling invested on mortgage security in the names of the same trustees: AND WHEREAS there are five children now living of the said M. D. and N., his wife: AND

That there  
are five  
children

WHEREAS a marriage has been agreed upon and is intended shortly to be solemnised between C. D. (one of the said children) and A. B. of, &c., Esquire: AND WHEREAS the said M. D. and N., his wife, are desirous of making such appointment to or in favour of the said C. D. as is hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said M. D. and N., his wife, in exercise of the power for this purpose given to them by the said indenture of settlement as aforesaid, and of all other powers (if any) enabling them in this behalf, do hereby appoint, that if the said intended marriage shall be solemnised before the expiration of twelve calendar months from the date of these presents, the trustees or trustee for the time being of the said indenture of settlement, shall from and after the decease of the survivor of the said M. D. and N., his wife, stand possessed of one equal fifth part or share of and in the trust moneys, stocks, funds, and securities for the time being subject to the trusts of the said indenture of settlement, IN TRUST for the said C. D., to be an interest vested in her upon the solemnisation of the said intended marriage, and to be transferred or paid to her so soon as conveniently can be, after the decease of the survivor of the said M. D. and N., his wife.

IN WITNESS, &c.

APPOINTMENT OF SHARE TO DAUGHTER.

Intended marriage of daughter one of such children.

Witnessing part.

Father and mother appoint one fifth of settled trust funds to intended wife.

#### No. V.

SETTLEMENT of REVERSIONARY PERSONAL estate APPOINTED to the intended WIFE by the last Precedent and of a POLICY of ASSURANCE on the life of the intended HUSBAND; The FATHER of intended Wife COVENANTS to pay an ANNUAL SUM until her property falls into possession.

REVERSIONARY PERSONAL ESTATE AND POLICY.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D., spinster, one of the daughters of M. D. of, &c., Esquire, and N., his wife (*intended wife*), of the second part, the said M. D., of the third part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the fourth part: WHEREAS a marriage has been agreed upon and is intended shortly to be solemnised between the said A. B. and the said C. D.: AND WHEREAS under or by virtue of an

Parties.

Recital of intended marriage.

REVER-  
SIONARY  
PERSONAL  
ESTATE AND  
POLICY.

That  
intended  
wife is  
entitled to  
reversionary  
property.

Agreement  
for settle-  
ment.

Witnessing  
part.

Intended  
wife assigns  
her rever-  
sionary  
share of  
trust funds  
to trustees.

indenture dated, &c., and made, &c. (being a settlement made previously to the marriage of the said M. D. and N., his wife, then N. O.), and a deed poll under the hands and seals of the said M. D. and N., his wife, bearing even date with these presents, the said C. D. will upon her said marriage, if the same takes place within twelve calendar months from the date of these presents, become entitled in reversion expectant upon the decease of the survivor of the said M. D., and N., his wife, to one equal fifth part or share of the trust funds subject to the trusts of the said indenture of settlement, and which trust funds now consist of the sum of £—— £3 per Cent. Consolidated Bank Annuities, standing in the names of W. X. and Y. Z. (the present trustees of the said indenture), in the books of the Governor and Company of the Bank of England, and a sum of £—— invested on mortgage of real estate in the names of the same trustees : AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said reversionary share of the said C. D. in the said trust funds, and such other property (if any) of the said C. D. as is hereinafter in that behalf mentioned, should be settled upon the trusts, and in the manner hereinafter expressed : AND that the said A. B. should effect a policy of assurance on his life in the sum of £——, and should settle the same upon the trusts and in the manner hereinafter expressed, and that the said M. D. should enter into such covenant as is hereinafter on his part contained for the payment of the annual sum of £—— during the period, and to be held upon the trusts hereinafter expressed : AND WHEREAS (*Recite Policy*, see *supra*, p. 211) : NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, the said C. D., with the privity of the said A. B. (testified by his executing these presents), doth hereby assign unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, ALL THAT the one-fifth part or share to which the said C. D. will, upon her said marriage, become entitled in reversion expectant as aforesaid of and in the said sum of £—— £3 per Cent. Consolidated Bank Annuities, and the said sum of £—— invested upon mortgage security respectively, or other the trust moneys, stocks, funds, and securities for the time being subject to the trusts of the said indenture of settlement of the —— day of ——, AND ALL the right, title, interest, claim, and demand whatsoever of the said C. D. in and to the same and every part thereof: To

HOLD the said part or share of trust funds hereby assigned, or expressed so to be, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, UPON TRUST that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee") shall require the transfer or payment to them or him of the moneys, stocks, funds, or securities constituting such part or share when and so soon as the same shall fall into possession, and shall either retain the same in the then state of investment thereof (if any), or with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees or trustee convert the same or any part thereof into money, and shall with such consent or at such discretion as aforesaid, invest the moneys which shall come to their or his hands by the ways and means aforesaid in or upon, &c. (*Trusts for investment, and varying investments, see supra, p. 202*), and shall stand possessed of the said trust moneys, stocks, funds, and securities (hereinafter called "the wife's trust funds"), UPON the trusts following (that is to say) : IN TRUST to pay the income thereof to the said C. D. during her life, and so that during her coverture the same shall be for her sole and separate use, and she shall not have power to dispose thereof in the way of anticipation, and after her decease, then IN TRUST to pay the said income to the said A. B., in case he shall survive the said C. D., during his life, and after the decease of the survivor of the said A. B. and C. D. then IN TRUST for (*Trusts for issue of intended marriage, as husband and wife or survivor shall appoint, and in default of appointment for children equally—sons at twenty-one, and daughters at twenty-one, or marriage,—Hotchpot clause,—Ultimate trust in default of issue for appointees by will of wife, or for her absolutely, or her next of kin, advancement clause,—Agreement to settle after-acquired property of wife, supra, p. 208 to 210*): AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said intended marriage, the said A. B. doth hereby assign unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, THE hereinbefore recited policy of assurance, and the said sum of £—— thereby assured, and all other moneys to become payable thereunder by way of bonus or

REVER-  
SIONARY  
PERSONAL  
ESTATE AND  
POLICY.

Upon trust  
to require  
transfer of  
same when  
it falls into  
possession,  
and to  
invest.

To pay  
income to  
intended  
wife for life  
for her  
separate use  
without  
power of  
anticipa-  
tion, and  
after her  
decease to  
intended  
husband  
for life,  
and after  
decease of  
survivor, in  
trust for  
issue, &c.



REVER-  
SIONARY  
PERSONAL  
ESTATE AND  
POLICY.

Assignment  
of policy,  
upon trust  
to receive  
the policy  
moneys,  
and after  
paying  
expenses  
shall stand  
possessed  
thereof.

Upon trusts  
before  
declared of  
the wife's  
property,  
except that  
ultimate  
trust is for  
husband.

Power to  
trustees to  
apply in-  
come or  
corpus of  
trust fund  
in keeping  
up policy.

Proviso for  
indemnity  
of trustees  
in respect of  
policy.

otherwise, To HOLD the said policy and premises hereby assigned or expressed so to be unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, UPON TRUST that the trustees or trustee shall, upon the death of the said A. B., receive the moneys assured by and to become payable under the said policy, and shall out of the said moneys in the first place, pay the expenses of and incidental to the obtaining payment thereof, and shall stand possessed of the residue of the said moneys, UPON THE SAME TRUSTS, and with and subject to the same powers and provisions as are hereinbefore declared and contained concerning the wife's trust funds, or such of them as shall be then subsisting and capable of taking effect: SAVE AND EXCEPT that if there shall be no issue of the said intended marriage in whom the moneys the trusts whereof are now being declared, or the stocks, funds, or securities in or upon which the same shall be invested, shall become absolutely vested, then and in such case the last-mentioned moneys, stocks, funds and securities shall, from and after the decease of the said C. D., and subject to the trusts and powers hereinbefore declared and contained for the benefit of the issue of the said intended marriage, go, remain, and be IN TRUST for the said A. B., his executors, administrators, and assigns (*Covenants by A. B. to keep up Policy, &c., supra*, p. 212): PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the trustees or trustee, at their or his discretion at any time or times to apply the income of any part of the trust funds for the time being subject to the trusts of these presents, or (if necessary) any part of the principal thereof, in or towards the payment of any sums which may be required for keeping on foot the said policy hereby assigned, or for effecting or keeping on foot any such new policy or policies as aforesaid, by reason of any breach of the covenant of the said A. B. hereinbefore in that behalf contained: PROVIDED ALSO, and it is hereby further agreed and declared, that it shall not be obligatory on the trustees or trustee to enforce the performance of any of the covenants hereinbefore contained on the part of the said A. B. in reference to the said policy of assurance, nor to apply any part of the income or principal of the said trust funds in or towards the keeping on foot or effecting any such policy as aforesaid, unless the trustees or trustee shall think fit so to do, nor shall it be considered a breach of trust for the trustees or trustee to permit the said covenants to

remain unperformed, or to permit any such policy as aforesaid to become void through any means whatsoever: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said intended marriage, the said M. D. doth hereby for himself, his heirs, executors, and administrators covenant with the said E. F., G. H., and I. K., their executors and administrators, that he the said M. D., his heirs, executors, or administrators will during the joint lives of the said M. D. and N., his wife, and the life of the survivor of them, if the said A. B. and C. D., or either of them, or any issue of the said intended marriage, shall so long live, pay to the trustees or trustee the annual sum of £——, by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months next after the solemnization of the said intended marriage, UPON TRUST that the said annual sum of £—— shall be paid and applied by the trustees or trustee to the person or persons and in the manner to whom and in which the income of the wife's trust funds would for the time being be payable or applicable under the trusts hereinbefore declared if the same had fallen into possession (*Investment clause, supra*, p. 204): AND IT IS HEREBY AGREED AND DECLARED that the trustees or trustee of these presents may approve of and allow the accounts of the trustees for the time being of the hereinbefore recited indenture of settlement, and also the accounts of any other trustees or persons having in their possession or under their control or being otherwise liable to account for any property of the said C. D. hereby agreed to be brought into settlement, and may give and execute to such trustees and other persons as aforesaid valid and effectual releases in respect of the said share hereby assigned by the said C. D. or in respect of any other property of her the said C. D. hereby agreed to be brought into settlement, and if any question shall arise with respect to the amount or value of the said share or other property or otherwise in relation thereto the trustees or trustee of these presents may arrange and settle every or any such question under the advice of counsel or otherwise in such manner as they or he shall in their or his absolute discretion think fit, without being answerable for any loss arising thereby (*Appointment of new trustees clause, supra*, p. 205).

REVER-  
SIGNARY  
PERSONAL  
ESTATE AND  
POLICY.

Covenant by  
father of  
intended  
wife to pay  
annual sum  
to trustees.

Power to  
trustees to  
settle  
accounts.

IN WITNESS, &c.

## No. VI.

APPOINT-  
MENT AND  
SETTLEMENT  
BY SAME  
DEED.

APPOINTMENT *by* PARENTS to TRUSTEES *at the request of the intended WIFE the object of the power and SETTLEMENT of the appointed money by one and the same deed* (a).

Parties.

THIS INDENTURE, made the — day of —, 18—, BETWEEN M. D. of, &c., and N. his wife (*father and mother of intended wife*), of the first part, C. D. of, &c. (*intended wife*), of the second part, A. B. of, &c. (*intended husband*), of the third part, and E. F. of, &c., G. H. of, &c., I. K. of, &c. (*trustees*), of the fourth part (*Recitals of settlement on marriage of father and mother, of present state of trust funds, that wife is one of children of said marriage, and of intended marriage, as in precedent No. IV.*): AND WHEREAS, upon the treaty for the said

Recital of  
agreement  
for appoint-  
ment and  
settlement.

intended marriage it was agreed that the said M. D. and N. his wife should appoint one-fifth part of the said trust funds as the share of the said C. D., and that the same should be settled by the said C. D. upon the trusts and in the manner hereinafter expressed, AND it was also agreed, that the appointment should be made directly to the trustees of the settlement intended to be hereby made at the request of the said C. D. and of the said A. B.: NOW THIS INDENTURE WITNESSETH, that the said M. D. and N. his wife, in exercise, &c. (*of power, supra*, p. 215), do hereby at the request of the said C. D., and also of the said A. B. (testified by their respectively executing these presents), appoint that if the said intended marriage between the said A. B. and C. D. shall take place within twelve calendar months from the date hereof, the trustees or trustee for the time being of the hereinbefore recited indenture of settlement shall, upon the decease of the survivor of them the said M. D. and N., his wife, pay or transfer one equal fifth part or share of and in the trust moneys, stocks, funds, and securities for the time being subject to the trusts of the said indenture, to the said E. F., G. H., and I. K., or the survivors or survivor of them or the executors or administrators of such survivor

Witnessing  
part.  
Appoint-  
ment of  
share to  
trustees at  
the request  
of the object  
of the  
power.

(a) An appointment may be made by the direction of an object of the power to trustees of a settlement on her marriage. Such an appointment is treated, first, as an appointment to the object; and, secondly, a settlement by such object. It is usual to have two deeds; but to save expense the plan of one deed is sometimes adopted.

or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"): Upon trust that the trustees or trustee shall require the transfer or payment to them or him of the moneys, stocks, funds, or securities constituting the part or share hereby appointed when and so soon, &c. (*Trusts to require transfer and to invest, and subsequent trusts, as in last Precedent.*)

APPOINTMENT AND SETTLEMENT BY SAME DEED.

Declaration of trusts.

IN WITNESS, &c.

No. VII.

TRANSFER of MORTGAGE DEBT and SECURITIES to TRUSTEES in contemplation of a MARRIAGE, and to the intent that the MORTGAGE DEBT may be settled, and the Trusts thereof be declared by a SETTLEMENT of even date (b).

TRANSFER OF MORTGAGE DEBT TO TRUSTEES OF INTENDED SETTLEMENT.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of &c., and I. K. of, &c. (*trustees*), of the third part (*Recite mortgage of freeholds to C. D. to secure £—*): AND WHEREAS the said principal sum of £—, secured by the hereinbefore recited indenture, still remains due and owing to the said A. B., but all interest for the same has been duly paid up to the — day of — last (*the last half-yearly day for payment of interest*): AND WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and C. D.: AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said principal sum of £—, secured by the hereinbefore recited indenture, and the interest thereof, and the securities for the same, should be transferred to the said E. F., G. H., and I. K., upon the trusts and in the manner hereinafter expressed:

Parties.

Recite mortgage to intended husband.

Agreement for marriage.

Agreement for settlement of sum secured on mortgage.

(b) Money secured by mortgage, which is intended to be made the subject of settlement, should, together with the security, be assigned to the intended trustees by a deed of even date with the settlement; for, if the transfer of the debt and securities are incorporated in the settlement, the title to the money could not be made out without the settlement, and the settlement would be essential to the title of the mortgagor, who would have a right to a covenant for its production. The form given in the above Precedent is that usually adopted, but it is suggested that it would be more convenient that the transfer should contain no reference to the settlement, and not disclose the fact that the transferees are trustees. See the next Precedent.

TRANSFER  
OF MORT-  
GAGE DEBT  
TO TRUSTEES  
OF INTENDED  
SETTLEMENT.

Witnessing  
part.  
Assignment  
of mortgage  
debt and  
interest.

To hold  
same in  
trust for  
husband  
until mar-  
riage.  
After  
marriage,  
upon trusts  
of deed of  
even date.

Conveyance  
by intended  
husband of  
heredita-  
ments to  
trustees,  
subject to  
subsisting  
equity of  
redemption.

Covenant by  
transferor  
against  
incum-  
brances.

NOW THIS INDENTURE WITNESSETH, that in pur-  
suance of the said agreement, and in consideration of the said  
intended marriage, the said A. B. doth hereby assign unto the  
said E. F., G. H., and I. K., their executors, administrators, and  
assigns, the said principal sum of £—, secured by the herein-  
before recited indenture, and all interest due and to become due  
for the same: AND the full benefit of the covenants, power of  
sale, and other powers and provisions contained in the said  
indenture for securing the payment of the same principal sum  
and interest: AND all the right, title, interest, property, claim,  
and demand, of him the said A. B., in and to the said principal  
sum and interest, and every part thereof: TO HOLD the same  
unto the said E. F., G. H., and I. K., their executors, adminis-  
trators, and assigns, IN TRUST for the said A. B., until the  
solemnisation of the said intended marriage, AND FROM and  
after the solemnisation thereof, UPON such trusts, and with and  
subject to such powers and provisions as are expressed and  
declared of and concerning the same by an indenture already  
prepared and engrossed, bearing or intended to bear even date  
with these presents, and made or intended to be made between  
(*parties*): AND IT IS DECLARED that the receipt of the trustees  
or trustee for the time being of these presents for the said  
principal sum of £—, and the interest thereof, shall be a suf-  
ficient discharge for the same, and any person paying the same  
shall not be bound or concerned to see or inquire as to the  
application thereof, and in particular what are the trusts de-  
clared concerning the same by the said indenture of even date  
herewith above referred to: AND THIS INDENTURE ALSO  
WITNESSETH, that in further pursuance of the said agree-  
ment, and in consideration of the said intended marriage, the  
said A. B. doth hereby grant unto the said E. F., G. H., and  
I. K., their heirs and assigns, ALL AND SINGULAR the heredita-  
ments and premises comprised in and granted or otherwise  
assured by the hereinbefore recited indenture, or expressed so  
to be (*and all estate, &c.*): TO HOLD the same unto and to the  
use of the said E. F., G. H., and I. K., their heirs and assigns,  
subject to such right or equity of redemption as is now subsist-  
ing therein, under or by virtue of the said recited indenture:  
AND THE SAID A. B. doth hereby for himself, his heirs, execu-  
tors, and administrators, covenant with the said E. F., G. H.,  
and I. K., their heirs, executors, administrators, and assigns,

that he, the said A. B., hath not done or knowingly suffered any act, deed, or thing whereby he is prevented from assigning and granting the said principal sum and interest, hereditaments and premises in manner aforesaid, or whereby the same, or any part thereof, are, is, can or may be in anywise incumbered (*Clause as to appointing new trustees, supra, p. 205*).

IN WITNESS, &c.

TRANSFER  
OF MORT-  
GAGE DEBT  
TO TRUSTEES  
OF INTENDED  
SETTLEMENT

No. VIII.

TRANSFER of MORTGAGE DEBT and SECURITIES to TRUSTEES in contemplation of MARRIAGE; it being intended to declare the trusts by a SETTLEMENT of even date, the fact of the transferees being trustees not being disclosed, and no reference being made to the settlement or the intended marriage (c).

TRANSFER  
OF  
MORTGAGE  
DEBT TO  
TRUSTEES.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*intended husband*), of the one part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the other part (*Recite mortgage of freeholds to A. B., and that principal sum remains due*): AND WHEREAS the said E. F., G. H., and I. K., have become entitled on a joint account to the said principal sum of £—, and the interest thereof, as the said A. B. doth hereby acknowledge, and the said A. B. hath therefore agreed to assign the same principal sum and interest, and the securities for the same, unto the said E. F., G. H., and I. K., in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said A. B. doth hereby assign, &c. (*Transfer of mortgage debt and security*): TO HOLD the same unto the said E. F., G. H., and I. K., their executors, administrators, and assigns absolutely: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement and in consideration of the premises, the said A. B., &c. (*Conveyance of mortgage hereditaments to E. F.,*

Parties.

That in-  
tended  
transferees  
have  
become  
entitled to  
mortgage  
debt and  
interest.

Witnessing  
part.

Intended  
husband  
transfers to  
transferees.

Second  
witnessing  
part

(c) See note to last Precedent, *supra*, p. 221. One advantage of the form in the above Precedent is that it is unnecessary to introduce any power of appointing new trustees. If new trustees of the principal settlement are appointed, the mortgage will be transferred to such new trustees by a deed in the form given in Vol. i., "Transfers of Mortgages."

TRANSFER  
OF  
MORTGAGE  
DEBT TO  
TRUSTEES.

Intended  
husband  
conveys  
heredita-  
ments sub-  
ject to  
equity of re-  
demption.  
Declaration  
that mort-  
gage debt  
belongs to  
transferees  
on joint  
account.

*G. H., and I. K., subject to equity of redemption, and covenant by A. B. against incumbrances*): AND IT IS HEREBY DECLARED by the said E. F., G. H., and I. K., that the principal sum and interest hereby assigned, or expressed so to be, belong to them jointly, both at law and in equity, and that the receipt of the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, shall be a sufficient discharge for the same.

IN WITNESS, &c.

### No. IX.

OF MORT-  
GAGE DEBT  
AND STOCK.

SETTLEMENT *of a MORTGAGE DEBT belonging to the intended HUSBAND, and a sum of STOCK belonging to intended WIFE; Usual TRUSTS and POWERS, the HUSBAND and WIFE to have respectively the first LIFE INTEREST in PROPERTIES settled by them; POWER to INVEST in PURCHASE of LAND.*

Parties.

Recite that  
husband is  
entitled to  
money on  
mortgage,

and wife to  
a sum of  
stock.

Agreement  
for settle-  
ment.

Transfer of  
mortgage,

THIS INDENTURE, made the — day of — 18—, BETWEEN A. B. of &c. (*intended husband*), of the first part, C. D. of, &c., (*intended wife*), of the second part, and E. F. of &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part (*Recite agreement for marriage*): AND WHEREAS the said A. B. is entitled to a sum of £ — secured on mortgage of freehold hereditaments, situate in the parish of —, in the county of —, and bearing interest after the rate of £4 per cent. per annum, which mortgage was effected by an indenture; &c. (*date and parties*): AND WHEREAS the said C. D. is entitled to a sum of £ — £3 per Cent. Consolidated Bank Annuities: AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said sum of £ —, secured as aforesaid, and also the said sum of £ — £3 per Cent. Consolidated Bank Annuities, and also such other property of the said C. D. as is hereinafter in that behalf mentioned, should be settled upon the trusts and in the manner hereinafter expressed: AND WHEREAS, with a view to the said intended settlement, the said A. B. has, by an indenture bearing even date with, and made between the same parties as, these presents, assigned the said principal sum of £ — and the interest thereof, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, IN TRUST for

the said A. B. until the said intended marriage shall be solemnised, and after the solemnisation thereof upon such trusts and with and subject to such powers and provisions as are expressed and declared concerning the same by an indenture therein mentioned (meaning these presents): AND WHEREAS the said C. D. has caused the said sum of £—— £3 per Cent. Consolidated Bank Annuities to be transferred into the names of the said E. F., G. H., and I. K., in the books of the Governor and Company of the Bank of England: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, it is hereby agreed and declared (d) as follows:—

OF MORT-  
GAGE DEBT  
AND STOCK.

and of stock  
to trustees.

Witnessing  
part.

1. THE said E. F., G. H., and I. K., and the survivors or survivor of them and the executors or administrators of such survivor or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee")

1. Trusts  
until  
marriage.

(d) This and the subsequent precedents of settlements are prepared on the paragraph plan, which has been for some time adopted in Acts of Parliament, equity pleadings, and many other legal and official documents, and is coming into gradual use with conveyancers. It presents obvious advantages as regards perspicuity and facility for convenient arrangement, and seems particularly adapted to such instruments as settlements, whether of real or personal estate. The above precedents follow strictly the well-established forms—the only speciality of the paragraph system being that instead of making the deed run on consecutively as one long sentence, broken occasionally by such expressions as "PROVIDED ALWAYS," "AND IT IS HEREBY AGREED AND DECLARED," &c., an expression of this kind is inserted once for all, and made applicable to all the clauses which follow, and which clauses are numbered separately.

Reasons for  
adopting  
the para-  
graph  
plan in  
settlements.

The solicitor will find that a deed prepared in paragraphs facilitates both the preparation and the examination of an abstract, particularly if the following recommendations are adopted—(1) The deed should be engrossed bookwise; (2) If the deed is a long one, it would be convenient to insert in the margin of each clause a short note, stating its purport, but such note should not be allowed to control its interpretation, and a clause to that effect should be added; (3) The abstract should state the number of clauses which the abstracted deed contains; it should also set out fully those which are material, and as to those which are immaterial, either the effect (which might be copied from the marginal note, if any) should be stated, or it might be stated generally, "clauses — to — do not relate to the subject of this abstract." A statement of this kind would attract the attention of the person who perused the abstract, and the person who examines it would ascertain its correctness. There would be no danger as at present, of a material clause being altogether overlooked.

Advantages  
of the plan  
in preparing  
and  
examining  
abstracts.  
Suggestions  
as to form  
of engross-  
ment of  
deed, and  
as to prepa-  
ration of  
abstracts.

The first eight precedents of settlements are retained in the non-paragraph form for the convenience of those who may prefer it. Any of such precedents may be readily converted into a paragraph deed, and, on the other hand, any of the paragraph deeds may be readily converted into a non-paragraph deed, by omitting the numbers, and adding the appropriate words, "AND IT IS HEREBY ALSO AGREED AND DECLARED," &c., before each clause.



OF MORT-  
GAGE DEBT  
AND STOCK.

shall stand possessed of the said sum of £—— £3 per Cent. Consolidated Bank Annuities IN TRUST for the said C. D. until the said intended marriage shall be solemnised, and after the solemnisation thereof shall stand possessed of the same Bank Annuities, and also of the said sum of £——, secured by the said indenture of mortgage and assigned to the said trustees by the said indenture of even date herewith as aforesaid, UPON the trusts and with and subject to the powers and provisions herein-after expressed and contained concerning the same.

2. After marriage trustees to retain present investment or change same.

2. The trustees or trustee may either retain the said principal sum of £—— secured by the said indenture of mortgage as aforesaid and the said Bank Annuities in their present state of investment respectively, or may, at any time or times, with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees or trustee, call in and sell the same respectively, and invest the moneys produced by such calling in and sale in some or one of the modes of investment hereinafter authorised, with power, from time to time, with such consent, or at such discretion as aforesaid, to vary the said investments into or for others of the same or a like nature. The said principal sum of £——, and the investments for the time being representing the same, are hereinafter referred to as “the husband’s trust funds.” AND the said sum of £——, £3 per Cent. Consolidated Bank Annuities, and the investments for the time being representing the same, are hereinafter referred to as “the wife’s trust funds.”

3. Income during joint lives to go to husband and wife respectively and then to survivor, and after death of survivor principal to go to issue in usual way.

3. THE trustees or trustee shall during the joint lives of the said A. B. and C. D. pay the income of the husband’s trust funds to the said A. B., and the income of the wife’s trust funds to the said C. D., for her sole and separate use, and so that she shall not have power to dispose thereof in the way of anticipation, and after the decease of such one of them the said A. B. and C. D. as shall die first, shall pay the income of all the said trust funds to the survivor of them during his or her life, and after the decease of such survivor, shall stand possessed of all the said trust funds, IN TRUST for such child, children, or remoter issue of the said intended marriage at such ages or times, or age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in

such manner as the said A. B. and C. D. shall by any deed or deeds jointly appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, then as the survivor of them the said A. B. and C. D. shall by any deed or deeds, or by his or her will, appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said intended marriage who, being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry under that age, in equal shares, and if there shall be but one such child, then the whole to be in trust for such one child: BUT so, nevertheless, that no child who or any of whose issue shall take any part of the trust funds under any such appointment as aforesaid shall be entitled to any share of the unappointed part of the trust funds, without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the persons or person making such appointment shall thereby direct the contrary: And if there shall be no child of the said intended marriage who, being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to the husband's trust funds, IN TRUST for the said A. B., his executors, administrators, and assigns, AND as to the wife's trust funds, UPON such trusts as the said C. D. shall by her will, notwithstanding her coverture, appoint: AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the said C. D., her executors, administrators, and assigns, if she shall survive her now intended coverture: BUT if she shall die during her now intended coverture, then IN TRUST for the person or persons who, under the statutes for the distribution of the effects of intestates, would on the decease of the said C. D. have been entitled thereto if she had died possessed thereof intestate and without having been married, such persons, if more than one, to take as tenants in common in the shares in which the same would have been divisible between them under the same statutes.

OF MORT-  
GAGE DEBT  
AND STOCK.

Hotchpot  
clause.

Ultimate  
trust of  
husband's  
trust funds  
for husband,  
and of wife's  
trust funds  
for appoint-  
tees by will  
of wife, or  
for wife or  
her next of  
kin.

4. The trustees or trustee may at any time or times at the request in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees or trustee raise any part or parts not exceeding together one

4. Advance-  
ment clause.

OF MORT-  
GAGE DEBT  
AND STOCK.

moiety of the vested or presumptive share of any child or grandchild of the said intended marriage under these presents, or under any such appointment as aforesaid, and apply the same for his or her advancement, preferment, or benefit in such manner as the said A. B. and C. D. or the survivor of them shall direct or the trustees or trustee shall think fit.

5. Agree-  
ment to  
settle other  
property of  
wife.

5. ALL real and personal property (if any) not hereinbefore settled, to which the said C. D., at the time of the said intended marriage, or she or the said A. B. in her right at any time during her now intended coverture, shall be or become entitled whether in possession, reversion, or otherwise (except jewels, trinkets, ornaments of the person, plate, linen, china, furniture, pictures, prints, books, and other articles of the like nature, and except also any legacy or other property acquired at one and the same time not exceeding in amount or value the sum of £200, all which excepted premises it is hereby declared shall belong to the said C. D. for her sole and separate use), shall, so soon as circumstances will admit, and at the cost of the trust estate, be assured and transferred by the said A. B. and C. D. respectively and by all other necessary and proper parties (if any) unto or otherwise vested in the trustees or trustee UPON TRUST that the trustees or trustee shall at such time or times, and in such manner as they or he shall think fit (but as to reversionary property not until it shall fall into possession), sell, call in, and convert into money such part of the said property as shall not consist of money or of investments of the nature hereinafter authorised, and shall stand possessed of such part of the said property, as shall consist of investments of the nature hereinafter authorised or of money uninvested, and also of the moneys to arise from such sale, calling in, and conversion as aforesaid, upon the trusts and with and subject to the powers and provisions hereinbefore declared and contained concerning the wife's trust funds, and the moneys to arise from the sale and conversion thereof respectively: AND in the meantime, and so long as any property hereinbefore directed to be sold shall remain unsold, shall pay the rents and income thereof to the person or persons and in the manner to whom and in which the income of the wife's trust funds shall for the time being be payable or applicable under the foregoing trusts: PROVIDED ALWAYS, that if any property to become vested in the trustees or trustee as aforesaid shall consist of an annuity or of the rents or income of real or personal property

payable to the said C. D. during her life or the life or lives of any other person or persons only, or for any term or period determinable on her death, or on the death of any other person, such annuity, rents, or income shall not be sold unless the said C. D. shall by writing direct the sale thereof, but the said annuity, rents, or income shall, unless and until the same shall be sold, be paid and applied to the persons and in the manner to whom and in which the income of the wife's trust funds shall for the time being be payable or applicable under the foregoing trusts.

OF MORT-  
GAGE DEBT  
AND STOCK.

6. All moneys (e) liable to be invested under these presents may be invested in or upon any stocks, funds, or securities of or guaranteed by the Government of the United Kingdom or of any British colony or dependency (including the stocks or securities of any railway or other company in India or elsewhere, having a fixed rate of interest thereon guaranteed as aforesaid), or in stock of the Bank of England, or the debentures or debenture stock or guaranteed or preference stock or shares of any railway or other company in Great Britain incorporated by Act of Parliament or Royal Charter, and paying a dividend on its ordinary stock or shares, or any debentures or debenture stock issued under the Local Loans Act, 1875, or upon real or leasehold securities in England or Wales, but not elsewhere, such leasehold securities being held for a term whereof sixty years at least shall be unexpired at the time of such investment: AND in lending money on any mortgage security the trustees or trustee may accept whatever title or evidence of title shall appear to them or him sufficient, and in particular may in the case of leasehold securities waive the production of the lessor's title, without being answerable for any loss arising thereby; and the trustees or trustee may at any time release any part of the property comprised in any mortgage security upon being satisfied that the remaining property comprised therein is a sufficient security for the money owing thereon. And the trustees or trustee (f) may, if they or he shall think fit, lend money on any such security as aforesaid, in conjunction with money advanced by any other person or persons by way of contributory loan, and in such case the security may be taken in the joint names of the several contri-

6. Invest-  
ment clause

Power to  
lend on con-  
tributory  
mortgages.

(e) For other forms of the investment clause, see *supra*, p. 204.

(f) This power of lending on contributory mortgages will be inserted or not, as in each case may be thought desirable.

OF MORT-  
GAGE DEBT  
AND STOCK.

7. Power to  
invest in  
purchase of  
land.

butories or any two or more of them, or in the joint names of any two or more persons to be nominated in that behalf by the several contributories, or such other arrangement may be made in relation thereto as the trustees or trustee may think fit.

7. It shall be lawful for the trustees or trustee at any time during the joint lives of the said A. B. and C. D., or the life of the survivor of them, upon their, his, or her request in writing, to convert into money all or any part of the trust funds for the time being subject to the trusts of these presents, and to invest the moneys arising thereby in the purchase of any messuages, lands, or hereditaments (*g*) situate in England or Wales, and being freehold or copyhold of inheritance, or leasehold for any term of years whereof sixty years at least shall be unexpired at the time of the purchase, with liberty upon any such purchase to accept such title or evidence of title as the trustees or trustee shall think fit, without being answerable for any loss arising thereby, and the hereditaments so to be purchased as aforesaid shall be assured to the trustees or trustee, and shall be held by them or him UPON TRUST that they or he shall, with the consent in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees or trustee, sell the same and stand possessed of the moneys to arise from such sale after paying thereout the expenses attending such sale upon the trusts and with and subject to the powers and provisions (including the power of purchasing hereditaments) by and in these presents declared and contained concerning the trust premises, which or the proceeds whereof shall have been laid out in the purchase of such hereditaments as aforesaid, or such of them as shall be then subsisting and capable of taking effect, AND shall in the meantime, and until the re-sale of the purchased hereditaments, pay and apply the rents and profits thereof to the person or persons and in the

(*g*) Sometimes it is desired to confine the power to the purchase of a dwelling-house. In such case, the words will be:—

“in the purchase of any messuage or dwelling-house or any land or ground adjoining such messuage or dwelling-house, or otherwise convenient to be held therewith, and so that the hereditaments to be purchased under this power shall be situate in England or Wales, and shall be freehold, &c.”

manner to whom and in which the income of the last-mentioned trust premises would for the time being have been payable or applicable under the trusts of these presents if such purchase had not been made, it being hereby declared that the hereditaments to be purchased as aforesaid shall be considered for all the purposes of this settlement as personal estate: AND until the re-sale of the said purchased hereditaments it shall be lawful for the trustees or trustee, with such consent or at such discretion as aforesaid, to lease the same, or any part thereof, for any term of years not exceeding twenty-one years, to take effect in possession, at the best rent that can reasonably be obtained for the same without taking anything in the nature of a fine or premium, and under such covenants and conditions as the trustees or trustee shall think fit.

OF MORT-  
GAGE DEBT  
AND STOCK.

8. THE statutory power of appointing new trustees shall for the purposes of these presents be vested in the said A. B. and C. D. during their joint lives, and in the survivor of them during his or her life, and upon any such appointment the number of trustees may be altered, provided that it be not reduced below two, and if at any time the number of trustees shall by death or otherwise be reduced to one, a new trustee or new trustees shall be appointed as soon as conveniently can be, but in the meantime and until such appointment all acts of the sole trustee shall be valid and effectual.

8. Provi-  
sion as to  
appoint-  
ment of new  
trustees.

9. THE said E. F., and any future trustee, &c. (*Solicitor trustee's clause, supra*, p. 206.)

9. Solicitor  
trustee's  
clause.

10. IF the said intended marriage shall not be solemnised within twelve calendar months from the date hereof, these presents shall be void, and the property hereby settled by the said A. B. and C. D. respectively shall be re-transferred to them respectively.

10. Settle-  
ment to be  
void if  
marriage is  
not made  
within  
twelve  
months.

11. THE notes in the margin of the several articles of these presents stating shortly the effect thereof respectively, are for the sake of more convenient reference, and shall not in anywise control or affect the interpretation or construction of these presents (*h*).

11. Marginal  
notes clause

(*h*) If no marginal notes are inserted in the engrossment, this clause will be omitted.

## No. X.

PERSONALTY  
IN POSSES-  
SION AND  
REVERSION.

---

SETTLEMENT *by intended Wife of* PERSONAL ESTATE *in* POSSESSION and REVERSION; TRUSTS *to pay the* INCOME *to the* WIFE and HUSBAND *successively for* life, *the interest of the* Husband *to be determinable on* his BANKRUPTCY, &c.; Usual trusts and provisions; POWER *to* WIFE *to* APPOINT *a part of the* trust funds *to* FUTURE Husband and ISSUE of FUTURE MARRIAGE; POWER *to* LEND *part of the* trust money *to the* HUSBAND *on his* BOND and a POLICY of ASSURANCE *on his* life.

Parties. THIS INDENTURE made the — day of —, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS a marriage has been agreed upon, and is intended shortly to be solemnised between the said A. B. and the said C. D.: AND WHEREAS the said C. D. is entitled in possession to a sum of £— £3 per Cent. Reduced Bank Annuities, and also to the sum of £— Stock of the Bank of England, commonly called Bank Stock, which were respectively lately standing in her name in the books of the Governor and Company of the Bank of England: AND WHEREAS under or by virtue of, &c. (*Recite that C. D. will on her marriage become entitled in reversion to one-fifth of settled trust funds, supra, p. 216*): AND WHEREAS upon the treaty for the said intended marriage, it was agreed that such settlement should be made as hereinafter expressed:

Recite agreement of marriage. Fortune of intended wife.

Agreement for settlement. AND WHEREAS, for the purposes of the said intended settlement, the said sum of £— £3 per Cent. Reduced Bank Annuities, and the said sum of £— Bank Stock have, before the execution of these presents, been respectively transferred into the names of the said E. F., G. H., and I. K., in the books of the Governor and Company of the Bank of England: NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH as follows:—

Transfer of stock into names of trustees.

Witnessing part.

1. Intended wife assigns her reversionary share of trust funds to trustees.

1. THE said C. D., with the privity of the said A. B. (testified by his executing these presents), doth hereby assign unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, ALL, &c. (*Assignment of reversionary share of settled trust*

*funds*, see *supra*, p. 216): To HOLD the said part or share of trust funds hereby assigned or expressed so to be unto the said E. F., G. H., and I. K., their executors, administrators, and assigns.

2. IT IS AGREED AND DECLARED that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall stand possessed of the said sum of £—— £3 per Cent. Reduced Bank Annuities, and the said sum of £—— Bank Stock respectively, so transferred as aforesaid, and also of the said part or share of trust funds hereby assigned or expressed so to be, IN TRUST for the said C. D. until the said intended marriage shall be solemnised, AND from and after the solemnisation thereof, UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

3. THE trustees or trustee shall require the transfer or payment to them or him of the part or share of trust funds hereinbefore assigned or expressed so to be, when and so soon as the same shall fall into possession, and shall, as to the said Bank Annuities and Bank Stock from and after the said intended marriage, and as to the said part or share of trust funds from and after the falling into possession thereof, either retain the same respectively in their present state of investment, or, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees or trustee, sell and convert into money the same or any part thereof, and shall, with such consent or at such discretion as aforesaid, invest the moneys to arise from every or any such sale and conversion as aforesaid, and also so much (if any) of the said part or share of trust funds as shall consist of money in some or one of the modes of investment hereinafter authorised, with power for the trustees or trustee, with such consent or at such discretion as aforesaid, to vary such investments unto or for others of the same or a like nature. THE said sums of £—— £3 per Cent. Reduced Bank Annuities and £—— Bank Stock, and the said part or share of trust funds hereinbefore assigned, and the investments for the time being representing the same respectively, are hereinafter referred to as "the trust funds."

PERSONALTY  
IN POSSES-  
SION AND  
REVERSION.

2. Declara-  
tion that  
trustees  
shall hold  
stock and  
reversion-  
ary share,  
in trust for  
intended  
wife until  
marriage,  
and after  
marriage,  
upon trusts  
after de-  
clared.

3. Trustees  
to require  
transfer, &c.  
of rever-  
sionary  
share when  
it falls into  
possession,  
and to retain  
investments  
or vary  
same.



PERSONALTY  
IN POSSES-  
SION AND  
REVERSION.

4. Trusts to pay income to wife for life for her separate use without power of anticipation, and after her death to her husband for life.

Proviso for cessor of husband's life interest on bankruptcy, &c.

4. THE trustees or trustee shall pay the income of the trust funds to the said C. D. during her life, and so that during her coverture the same shall be for her sole and separate use, and she shall not have power to dispose thereof in the way of anticipation, and after her decease shall pay the said income to the said A. B. during his life: PROVIDED NEVERTHELESS that if the said A. B. shall assign, charge, or otherwise dispose of the said income, or any part thereof, or shall become bankrupt, or do or suffer any thing whereby the said income if payable to him absolutely or any part thereof would become vested in any other person, then and in such case the trust hereinbefore declared in favour of the said A. B. shall cease, and during the remainder of the life of the said A. B. the trustees or trustee may, at their or his discretion, apply the whole or any part of the said income for the support and benefit of the said A. B. and his issue (if any), or any one or more of them, in such manner as the trustees or trustee shall think fit, and shall pay and apply the surplus (if any) of the said income, or the whole thereof (if none shall be applied in manner aforesaid) to the person or persons to whom and in which the said income would be payable or applicable under these presents if the said A. B. were dead (i).

5. Trusts for issue.

5. AFTER the death of the survivor of the said A. B. and C. D. the trustees or trustee shall stand possessed of the trust funds, IN TRUST, &c. (*Trusts for issue as husband and wife or survivor shall appoint, and in default of appointment for children equally—sons at twenty-one, and daughters at twenty-one or marriage,—Hotchpot clause, supra, p. 226*). AND if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then IN TRUST for, &c. (*Appointment by will of wife and in default of appointment for wife or the next of kin, supra, p. 227*).

6. Advancement clause.

6. (*Advancement clause, supra, p. 227*).

7. Power to wife to appoint the income of a

7. IF the said C. D. shall survive her now intended coverture and marry again (k), then and in such case, and notwithstanding

Proper form of clause of forfeiture on bankruptcy.

(i) As the intention of the parties is generally not to take away the income from the husband himself, except so far as is necessary to prevent its passing into the hands of alienees or creditors, this object seems, on the whole, to be best attained by a discretionary power vested in the trustees during the rest of the husband's life, as above provided.

(k) Whenever the property of the wife is of considerable amount, and

ing the foregoing trusts, it shall be lawful for the said C. D. at any time or times, either before or after any such subsequent marriage, by any deed or deeds, or by her will to appoint that the income, of any part or parts not exceeding the proportion hereinafter mentioned of the trust funds, shall be paid to any husband of her the said C. D. who may survive her, for his life or any less period: AND ALSO to appoint that any part or parts not exceeding the proportion hereinafter mentioned of the trust funds, shall from and after the decease of the said C. D. (and subject to any life or other interest appointed to a husband under the power last hereinbefore contained, in exoneration of the residue of the trust funds), go and be held, IN TRUST for such child, children, or remoter issue of any such subsequent marriage, at such age or time, ages or times not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage, in such shares, if more than one, upon such conditions and in such manner as the said C. D. shall by such appointment direct, with liberty for her in and by such appointment to confer on her husband jointly with herself and on the survivor of them any power or powers of appointment to or among their issue, or any of them, and also to confer on the trustees or trustee a power of advancement to the extent of one moiety of the vested or presumptive share of any child or remoter issue: PROVIDED ALWAYS, that the part or parts of the trust funds, the income whereof may be appointed to any after-taken husband, and the principal whereof may be appointed to the issue of any subsequent marriage or marriages of the said C. D., under the foregoing powers in that behalf, shall not exceed the proportion of the trust funds which is next hereinafter mentioned (that is to say), IF THERE SHALL BE only one child of the now intended marriage, who, being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, the same shall not exceed two third parts of the trust funds: IF THERE SHALL BE two or three children, and no more, of the now intended marriage, who, being a son or sons shall attain the age of twenty-

PERSONALTY  
IN POSSES-  
SION AND  
REVERSION.

portion of  
the trust  
funds to a  
future  
husband,

and also the  
principal of  
a portion of  
the trust  
funds to the  
issue of a  
future  
marriage.

Portion to  
be ap-  
pointed  
under afore-  
said powers  
not to  
exceed a  
certain pro-  
portion of  
the trust  
funds ac-  
cording to  
the number  
of children  
of now  
intended  
marriage

her age is such as to make it not improbable that if she survives her husband she may marry again and have issue by her second husband, a power to make a settlement on such second marriage should be given her. Three alternative forms of such a power are given above, one of which may be readily adapted to meet any variation which the circumstances of the case may require.

PERSONALTY  
IN POSSESS-  
SION AND  
REVERSION.

Issue of a  
future  
marriage  
shall not  
take a  
greater pro-  
portion  
between  
them than  
issue of now  
intended  
marriage.

Powers in  
favour of  
future hus-  
band and  
issue of  
future  
marriage  
may be  
exercised  
before event  
is ascer-  
tained.

one years, or being a daughter or daughters shall attain that age or marry, the same shall not exceed one moiety of the trust funds; AND IF THERE SHALL BE four or more children of the now intended marriage, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, the same shall not exceed one-third part of the trust funds: [PROVIDED ALSO (*l*), that the part or parts of the trust funds to which the issue of any subsequent marriage or marriages of the said C. D. shall become entitled between them under any such appointment or appointments as aforesaid, shall not bear a greater proportion to the residue of the trust funds than the number of children of any such subsequent marriage or marriages, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall bear to the number of children of the now intended marriage, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry: BUT in ascertaining such proportion as last aforesaid, any sum of money which may be advanced for the benefit of an infant child under the power in that behalf hereinafter contained, shall not be reckoned or taken into account unless such child, being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age.] PROVIDED ALSO, that the said C. D. may exercise the foregoing powers in favour of an after-taken husband and the issue of a subsequent marriage respectively, while it shall be uncertain what part of the trust funds shall or may eventually fall within the scope thereof, and the same shall take effect according to the event: AND if at the decease of the said C. D. any son or unmarried daughter of the now intended marriage shall be under the age of twenty-one years, the income payable to an after-taken husband under any such appointment as aforesaid shall, during such minority, be the same as would for the time being be payable to him if every such minor had attained the age of twenty-one years.

*(Or the following form.)*

7A. Power  
to wife to  
appoint  
income of a

7A. IF the said C. D. shall survive her now intended coverture and marry again, then and in such case, and not-

(*l*) This proviso will be omitted, when not thought necessary.

withstanding the foregoing trusts it shall be lawful for the said C. D., either before or after any such subsequent marriage, by any deed or deeds, or by her will, to appoint that the income of any part not exceeding one moiety of the trust funds hereby settled shall after her decease be paid to any husband of her who may survive her during his life or for any less period: AND ALSO to appoint that any part of the trust funds hereby settled not being a greater proportion to the residue of the said trust funds than the number of children of any subsequent marriage or marriages of the said C. D., who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall bear to the number of children of the now intended marriage, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall from and after the decease of the said C. D. (and subject to any life or other interest appointed to a husband as aforesaid in exoneration so far as the same will extend of the residue of the trust funds), go and be held, IN TRUST for such child, children, or remoter issue of the said C. D. by any such subsequent marriage at such ages or times, age or time (not being earlier as to any object of this power than his or her age of twenty-one years, or day of marriage), in such shares if more than one, and in such manner as she the said C. D. shall by such appointment direct, with liberty for her in and by such appointment to confer on her husband, jointly with herself, and on the survivor of them, any power or powers of appointment to be subsequently exercised to or among their issue or any of them, and also to confer in the trustees or trustee a power of advancement to the extent of one moiety of the vested or presumptive share of any child or remoter issue.

PERSONALTY  
IN POSSES-  
SION AND  
REVERSION.

moiety of  
the wife's  
trust funds  
to a future  
husband for  
life,

and a cer-  
tain propor-  
tion corre-  
sponding  
with the  
number of  
children of  
each mar-  
riage to the  
issue of a  
future  
marriage.

*(Another form).*

7B. IF the said C. D. shall survive her now intended coverture and marry again [and there shall be not more than four children of the now intended marriage, who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry] (*m*) then and in such case, and notwithstanding the foregoing trusts, it shall be lawful for the said C. D. either before or after any such subsequent

(*m*) The words in brackets can be omitted if desired.

PERSONALTY  
IN POSSES-  
SION AND  
REVERSION.

marriage by any deed or deeds, or by her will to appoint that the income of any part not exceeding one moiety of the trust funds hereby settled shall after her decease be paid to any husband of her who may survive her, during his life or for any less period, AND ALSO to appoint that any part not exceeding one moiety of the said trust funds shall, after the decease of the said A. B. and subject to any life or other interest appointed to a husband under the power last hereinbefore contained, in exoneration of the residue of the said trust funds, go and be held, IN TRUST for, &c. (*Issue of a future marriage as in Article 7A*).

8, 9. Agree-  
ment to  
settle other  
property of  
wife, and  
investment  
clause.

8. IT IS AGREED AND DECLARED, that all real and personal property, &c. (*Agreement to settle other property of wife, supra, p. 228*).

9. ALL moneys liable, &c. (*Investment clause, supra, p. 229*).

10. Power  
to lend  
part of  
trust funds  
to husband  
on the  
security of  
his bond or  
covenant  
and a policy  
of assurance  
on his life.

10. IT shall be lawful for the trustees or trustee at their or his discretion, at any time or times during the life of the said A. B., upon his request in writing, and with the consent in writing of the said C. D., if she shall be then living, to raise out of the trust funds for the time being subject to the trusts of these presents, and to lend to the said A. B. any sum or sums of money not exceeding together £—, upon his securing the repayment thereof with interest by his bond or covenant, and by a policy of assurance on his life in a sum of money equal to the amount so lent, which policy shall be either effected in the names or name of the trustees or trustee, or assigned to them or him by way of mortgage, with such proper and usual covenants on the part of the said A. B. for keeping on foot the said policy, and otherwise in relation thereto as the trustees or trustee shall require: AND if the said A. B. shall neglect or fail to keep on foot the said policy, it shall be lawful for the trustees or trustee to apply a competent part of the income of the trust funds for the time being subject to the trusts of these presents in or towards the payment of any sums which may be required for keeping on foot the said policy, or (in case the same shall become void) for effecting or keeping on foot any new policy in lieu thereof: PROVIDED NEVERTHELESS, that it shall not be obligatory on the trustees or trustee to enforce the performance of any bond or covenant to be entered into by the said A. B. for the repayment of the

Power to  
trustees to  
apply in-  
come of  
trust funds  
in keeping  
up policy.

Proviso for  
indemnity  
of trustees  
in relation  
to the exer-  
cise of this  
power.

money to be lent to him as aforesaid, or for keeping on foot any policy or otherwise in relation thereto, nor to apply any part of the income of the trust funds in or towards keeping on foot or effecting any such policy as aforesaid, unless the trustees or trustee shall think fit so to do, and the trustees or trustee shall not be liable for any loss which may arise by reason of the non-performance by the said A. B. of any such bond or covenant as aforesaid, or by reason of any such policy becoming void through any means whatsoever: PROVIDED ALSO, that the trustees or trustee shall not require the said A. B. to re-pay any money lent to him under the power conferred by this article so long as he shall duly keep on foot the policy of assurance on which the same shall for the time being be secured: BUT the said A. B. shall be at liberty to pay the same or any part thereof not being less than £—— at one payment whenever he thinks fit so to do.

PERSONALTY  
IN POSSES-  
SION AND  
REVERSION.

Proviso that  
money lent  
to husband  
shall not be  
called in so  
long as he  
keeps up  
policy.

11. THE trustees or trustee of these presents may approve of and allow, &c. (*Power to settle accounts, supra*, p. 219).

11. Power to  
settle  
accounts.

12. THE power, &c. (*Clause as to appointment of new trustees, supra*, p. 231).

12. Appoint-  
ment of new  
trustees  
clause.

13. If the said intended marriage shall not be solemnised before the expiration of twelve calendar months from the date of these presents, then and in such case these presents shall be void, and the property hereby settled by the said C. D. shall be re-transferred to her.

13. Settle-  
ment to be  
void if mar-  
riage not  
solemnized  
within  
twelve  
months.

IN WITNESS, &c.

#### NO. XI.

SETTLEMENT *on the SECOND MARRIAGE of a Lady under POWERS contained in Article 7 of the last Precedent, there being Four Infant Children of that Marriage; INCOME for separate use of Wife during Coverture; APPOINTMENT of ONE-THIRD of Settled Funds to HUSBAND and ISSUE of intended Marriage; APPOINTMENT upon same Trusts of FURTHER PORTIONS in case of PARTIAL FAILURE of ISSUE of FORMER MARRIAGE to attain vested interests, and DECLARATION of TRUSTS of ENTIRETY of Trust Funds in case of TOTAL FAILURE of ISSUE of former Marriage to attain vested Interests.*

ON SECOND  
MARRIAGE  
UNDER  
POWER.

THIS INDENTURE made the —— day of ——, BETWEEN Parties.



1. THE trustees for the time being of the hereinbefore recited indenture (hereinafter called "the trustees or trustee"), shall pay the income of the settled trust funds to the said C. B. during her life, pursuant to the trust in that behalf declared by the said indenture but so that the same shall be for her sole and separate use, free from the control of the said A. B., and that she shall not have power while under coverture to dispose thereof in the way of anticipation.

ON SECOND  
MARRIAGE  
UNDER  
POWER.

1. Income of trust funds shall be paid to wife for her separate use without power of anticipation.

2. FROM and after the decease of the said C. B. the trustees or trustee shall stand possessed of one equal third part of the settled trust funds, IN TRUST to pay the income thereof to the said X. Y. during his life, and after his decease, IN TRUST for &c. (*Trusts for issue as husband and wife or survivor shall appoint, and in default of appointment for children equally—sons at twenty-one, and daughters at twenty-one or marriage,—Hotchpot clause, supra, pp. 226, 227.*)

2. One-third of trust funds after decease of wife to go to intended husband life and after his decease to issue of intended marriage.

3. IF one of the said four children of the said C. B., by her late husband A. B., shall die, being a son, under the age of twenty-one years, or being a daughter under that age, and without having been married, then and in such case and from and after the death of the said C. B. or the death of such child (which event shall last happen), the trustees or trustee shall stand possessed of one-sixth part of the settled trust funds, in addition to the one-third part mentioned in Article 2, and making therewith one moiety of the settled trust funds, UPON the trusts and with and subject to the powers and provisions declared by Article 2 concerning one-third part of the settled trust funds, or such of them as shall be then subsisting and capable of taking effect.

3. If one of four children of former marriage shall die under twenty-one, &c., a further one-sixth to go upon similar trusts.

4. IF three of the said four children of the said C. B. by the said A. B. deceased shall die, being a son or sons under the age of twenty-one years, or being a daughter or daughters under that age, and without having been married, then and in such case, and from and after the death of the said C. B., or the death of such one of them the said three children so dying as aforesaid as shall last die (which of the said events shall last happen), the trustees or trustee shall stand possessed of one other sixth part of the settled trust funds, in addition to the one-third part and one sixth-part mentioned in Articles 2 and 3 respectively, and making therewith two full third parts of the settled trust funds, UPON the trusts and with and subject to the

4. If three of said four children shall die under twenty-one, &c., a further one-sixth to go upon similar trusts.



ON SECOND  
MARRIAGE  
UNDER  
POWER.

5. Proviso  
that issue of  
now in-  
tended  
marriage  
shall not  
take a  
greater  
proportion  
than issue of  
former  
marriage.

6. Declara-  
tion of trust  
of entire  
trust funds,  
in case no  
issue of  
former  
marriage  
shall attain  
a vested  
interest.

Upon same  
trusts as  
before  
declared  
concerning  
appointed  
one-third.

8. If no issue  
of now  
intended  
marriage,  
ultimate  
trust for  
wife or her  
appointees  
by will or  
next of  
kin.

9. Power of  
appoint-  
ment  
among issue  
of former  
marriage  
to remain in  
force.

powers and provisions declared by Article 2 concerning one-third part of the settled trust funds, or such of them as shall be then subsisting and capable of taking effect.

[5. PROVIDED ALWAYS (a), that the portion of the settled trust funds to which the issue of the now intended marriage shall become entitled between them under the trusts and provisions of these presents, shall not bear a greater proportion to the residue of the settled trust funds than is limited and provided in that behalf by the hereinbefore recited indenture and if the portion hereinbefore expressed to be appointed in favour of the issue of the now intended marriage shall exceed the aforesaid proportion, then and in such case the trusts hereby declared in favour of such issue shall be void so far as regards the excess, but subject and without prejudice to the life interest of the said X. Y. therein.]

6. If neither of the said four children of the said C. B. by the said A. B. deceased, and no issue of any such child shall become absolutely entitled to the residue not hereinbefore appointed of the settled trust funds, under the trusts and powers of the hereinbefore recited indenture, then and in such case and subject to the same trusts and powers and from and after the death of the said C. B. or such failure of issue as aforesaid (which shall last happen), the trustees or trustee shall stand possessed of the entirety of the settled trust funds, UPON the trusts and with and subject to the powers and provisions declared by Article 2, concerning one third part of the settled trust funds or such of them as shall then be subsisting and capable of taking effect.

7. (*Advancement clause, supra, p. 227.*)

8. IF no child of the said C. B. by the said A. B. deceased, or by the said X. Y. shall become absolutely entitled to the settled trust funds under the trusts and powers of the hereinbefore recited indenture and of these presents respectively, then and in such case and subject to the same trusts and powers, the trustees or trustee shall stand possessed of the settled trust funds, IN TRUST for, &c. (*Ultimate trust for the wife's appointees by will or for wife absolutely or her next of kin, supra, p. 227.*)

9. THE power of appointment among the children and remoter issue of the said C. B. by the said A. B. deceased now vested in the said C. B. as having survived the said A. B. under

(a) If the proviso at the end of paragraph 6 in the last Precedent is omitted, the above proviso will be omitted also.

the hereinbefore recited indenture, shall remain in full force, and may be exercised by her, notwithstanding her now intended coverture, so far as regards the residue not subject to the trusts of these presents of the settled trust funds.

ON SECOND  
MARRIAGE  
UNDER  
POWER.

IN WITNESS, &c.

No. XII.

SETTLEMENT of two SUMS OF MONEY, SECURED by the COVENANTS of the HUSBAND'S FATHER and WIFE'S FATHER respectively, the HUSBAND'S LIFE INTEREST in both FUNDS to be determinable on ALIENATION or BANKRUPTCY.

MONEY  
SECURED BY  
FATHER'S  
COVENANT.

THIS INDENTURE, made the — day of —, BETWEEN H. B. of, &c. (*father of intended husband*), of the first part, A. B. of, &c., one of the sons of the said H. B. (*intended husband*), of the second part, M. D. of, &c. (*father of intended wife*), of the third part, C. D., spinster, one of the daughters of the said M. D. (*intended wife*), of the fourth part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*) of the fifth part (*Recite agreement for marriage*): AND WHEREAS upon the treaty for the said intended marriage it was agreed that the sums of £3,000 and £3,000, to be secured by the covenants of the said H. B. and M. D. respectively, and to be paid at the times hereinafter respectively mentioned, should be settled upon the trusts and in the manner hereinafter expressed: NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH AND DECLARES as follows:—

Recital of  
intended  
settlement.

Witnessing  
part.

1. THE said H. B. hereby for himself, his heirs, executors, and administrators, covenants with the said E. F., G. H., and I. K., their executors and administrators, that he the said H. B., his heirs, executors, or administrators, will within six calendar months after the solemnisation of the said intended marriage, pay to the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), the sum of £3,000, with interest thereon after the rate of £4 per cent. per annum, computed from the day on which the marriage shall take place.

1. Hus-  
band's  
father cove-  
nants to pay  
sum of  
money to  
trustees  
after  
marriage.

2. THE said M. D. hereby for himself, his heirs, executors, and administrators covenants with the said E. F., G. H., and I. K.,

2. Wife's  
father cove-  
nants to pay  
sum of

MONEY  
SECURED BY  
FATHER'S  
COVENANT.

money to  
trustees on  
his death.

3. Trust to  
invest.

their executors and administrators, that he the said M. D. will, during his life, or his heirs, executors, or administrators, will, within six calendar months after his death, pay to the trustees or trustee the sum of £3,000 sterling, with interest thereon after the rate aforesaid, in case the same shall not be paid in the lifetime of the said M. D., computed from the day of his death.

3. THE trustees or trustee shall, upon the receipt of the said sums of £3,000 and £3,000 respectively, with the consent of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees or trustee, invest the same in some or one of the modes of investment hereinafter authorised, and may with such consent or at such discretion as aforesaid, vary the said investments into or for others of the same or a like nature. The sum of £3,000 hereinbefore covenanted to be paid by the said H. B., and the investments for the time being representing the same, are hereinafter referred to as "the husband's trust funds," and the sum of £3,000 hereinbefore covenanted to be paid by the said M. D., and the investments for the time being representing the same, are hereinafter referred to as "the wife's trust funds."

4. Trusts of  
income of  
husband's  
trust funds.

Proviso in  
case of  
alienation or  
bankruptcy.

4. THE trustees or trustee shall pay the income of the husband's trust funds to the said A. B. during his life, and after his decease to the said C. D. during her life: PROVIDED ALWAYS (a), that if the said A. B. shall assign or charge the said income, or any part thereof, or become bankrupt, or do or suffer any other act or thing whereby the said income, if payable to him absolutely, or any part thereof, would become vested in any other person, then and in such case the trust hereinbefore declared in favour of the said A. B. shall cease and determine, and the trustees or trustee shall thenceforth during the life of the said A. B. pay the said income to the said C. D. (if living) for her sole and separate use, and so that she shall not have power to dispose thereof in the way of anticipation; but if the said C. D. shall not be living at the time of the cesser of the said trust in favour of the said A. B., or if she shall subsequently die in his lifetime, then from and after the cesser of the said trust, or from and after the death of the said C. D., which shall last happen, the trustees or trustee may, at their or his discretion, during the remainder of the life of the said A. B. apply the said income or any part thereof to or for the benefit of the said A. B.

(a) See note (c), *supra*, p. 234.

and his issue (if any) or any one or more of them, in such manner as the trustees or trustee shall think fit, and shall pay or apply the surplus (if any) of the said income or the whole thereof, if none shall be applied in manner aforesaid, to the person or persons and in the manner to whom and in which the said income would be payable or applicable under these presents if the said A. B. were dead.

MONEY  
SECURED BY  
FATHER'S  
COVENANT.

5. THE trustees or trustee shall pay the income of the wife's trust funds to the said C. D. during her life, and so that during the now intended coverture the same shall be for her sole and separate use, and she shall not have power to dispose thereof in the way of anticipation, and after her death shall pay the said income to the said A. B. if he shall survive her during his life : PROVIDED ALWAYS that if the said A. B. shall assign or charge the said income or any part thereof, or shall become bankrupt, or do or suffer any other thing whereby the said income, if payable to him absolutely, or any part thereof, would become vested in any other person, then and in such case the trust declared by this present article in favour of the said A. B. shall cease and determine : AND from and after the death of the said C. D., or the cesser of the last-mentioned trust, which shall last happen, and during the remainder of the life of the said A. B. the trustees or trustee may at their or his discretion apply the said income or any part thereof for the support or benefit of the said A. B. and his issue (if any) or any of them in such manner as the trustees or trustee shall think fit : AND shall pay or apply the surplus (if any) of the said income or the whole thereof (if none shall be applied in manner aforesaid) to the person or persons and in the manner to whom and in which the said income would be payable or applicable under these presents if the said A. B. were dead.

5. Trusts of  
income of  
wife's trust  
funds.  
Similar  
proviso on  
alienation or  
bankruptcy.

6. AFTER the death of the survivor of the said A. B. and C. D. the trustees, &c. (*Trusts for issue and Hotchpot clause, supra*, pp. 226, 227) : AND if there shall be no child of the said intended marriage who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to the husband's trust funds, IN TRUST for such person or persons and in such manner as the said H. B. shall by deed appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the said A. B., his executors, administrators, and assigns absolutely : AND shall stand possessed of the

MONEY  
SECURED BY  
FATHER'S  
COVENANT.

wife's trust funds, IN TRUST for such person or persons, and in such manner as the said M. D. shall by deed appoint: AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the said C. D., her executors, administrators, and assigns, if she shall survive her now intended coverture, but if she shall die during her now intended coverture, then [IN TRUST for such person or persons being a brother or sister, or brothers or sisters, or the issue of a brother or sister, or of brothers or sisters, of her the said C. D., as she the said C. D. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend] IN TRUST for, &c. (*Next of kin under the Statutes of Distribution,—Advancement, investment, and appointment of new trustee clauses, supra, pp. 227, 229, 231*) (b).

IN WITNESS, &c.

### No. XIII.

CONVEYANCE  
OF LAND ON  
TRUST FOR  
SALE IN  
CONTEMPLA-  
TION OF A  
MARRIAGE.

CONVEYANCE of FREEHOLDS, in CONTEMPLATION of  
a MARRIAGE, to TRUSTEES on TRUST to SELL, and  
to hold the PROCEEDS on the TRUSTS of an INDEN-  
TURE of SETTLEMENT of even date.

Parties.

THIS INDENTURE, made the — day of —, BETWEEN  
A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c.  
(*intended wife*), of the second part, and E. F. of, &c., G. H. of,  
&c., and I. K. of, &c. (*trustees*) of the third part: WHEREAS a  
marriage is intended shortly to be solemnized between the said  
A. B. and the said C. D.: AND WHEREAS upon the treaty for the  
said intended marriage it was agreed that the said A. B. should

Agreement  
for mar-  
riage.

Agreement  
for convey-  
ance of here-  
ditaments  
to trustees.

(b) Where the money settled on the part of either party is found by his or her father, it is not quite clear what ought to be the form of the ultimate trust, in case of no issue of the marriage. The father may expect that the money should come back to him in that event, and that the ultimate trust should be framed accordingly. This seems right in theory, but it would often lead in practice to an inequality. Suppose, for instance, that the father dies shortly afterwards, and then the son or daughter (as the case may be), becomes a widower or widow, without issue of the marriage. It is probable that the father will, by his will have given his residue among his other children, thinking the child in question to be already provided for by the settlement. If this is so, the child will be reduced to a life interest, and will be unable, in case of a second marriage, to make any settlement: whereas the other children will probably have an absolute interest in their shares. On the whole, it is recommended that, in the absence of special instructions, a power of appointment by deed be given to the father, and that, subject to such power, the ultimate trust be in the usual form, except that the testamentary power usually given to a wife when the money settled is her own, may be properly omitted, or a limited power of appointment may be given as above.

convey the hereditaments hereinafter described, unto and to the use of the said E. F., G. H., and I. K., their heirs and assigns, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same: CONVEYANCE OF LAND ON TRUST FOR SALE IN CONTEMPLATION OF A MARRIAGE. NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, the said A. B. doth hereby Grant of hereditaments to trustees. grant unto the said E. F., G. H., and I. K., and their heirs, ALL, &c. (*Parcels, general words, and all the estate, &c.*), To HAVE AND TO HOLD the hereditaments and premises hereby granted, or expressed so to be, unto the said E. F., G. H., and I. K., and their heirs, To THE USE of the said A. B., his heirs and assigns, To use of intended husband until marriage. until the solemnization of the said intended marriage; AND FROM AND AFTER the solemnization thereof, To THE USE of the said E. F., G. H., and I. K., their heirs and assigns (*a*), UPON

(*a*) It is usual to vest the legal estate in the trustees immediately after the marriage, as in the text; but as in most cases an immediate sale is not contemplated, and it is intended that the husband shall remain in the possession and management of the property, it would appear more convenient to give him the legal estate during his life. If this suggestion is adopted, the provisions of the deed after marriage will be as follows:—

AND from and after the solemnization of the said intended marriage, To THE USE of the said A. B. and his assigns during his life without impeachment of waste, and from and after his decease To THE USE of the said E. F., G. H., and I. K., their heirs and assigns, upon trust that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs of such survivor, do and shall, with the concurrence of the said A. B. during his life, and after his death with the consent in writing of the said C. D. during her life, and after the decease of the survivor of the said A. B. and C. D., at the discretion of the said trustees or trustee for the time being, sell, &c. (*as in text*): PROVIDED ALWAYS, and it is hereby declared, that in case the said hereditaments and premises, or any part thereof, shall be sold in the lifetime of the said A. B. under the aforesaid trust in that behalf, the same shall be sold as an estate in possession: AND IT IS HEREBY ALSO AGREED AND DECLARED, that the trustees or trustee selling as aforesaid shall receive all the moneys to arise from any such sale or sales as aforesaid (including, in case any such sale shall be made in the lifetime of the said A. B., such part of the said moneys as shall represent his life estate), and after paying and retaining thereout the costs and expenses attending such sale shall stand possessed of

CONVEYANCE  
OF LAND ON  
TRUST FOR  
SALE IN  
CONTEMPLA-  
TION OF A  
MARRIAGE.

After  
marriage to  
use of  
trustees  
upon trust  
to sell,

and to hold  
proceeds of  
sale on  
trusts of

indenture of  
even date.

Power to  
trustees to  
lease.

TRUST that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs of such survivor, shall, upon the request of the said A. B. during his life, and after his decease upon the request in writing of the said C. D. during her life, and after the decease of the survivor of them the said A. B. and C. D., at the discretion of the said trustees or trustee for the time being, sell the hereditaments and premises hereby granted, or expressed so to be: AND shall receive the moneys which shall arise from any such sale as aforesaid, and after paying and retaining thereout the costs and expenses attending such sale, shall stand possessed of the residue of the said moneys, and also of the rents and profits of the said hereditaments and premises until the same shall be sold, upon such trusts and with and subject to such powers and provisions as are or shall be expressed and declared concerning the same by an indenture already prepared and engrossed, bearing or intending to bear even date with these presents, and made or intended to be made between, &c. (*parties*): AND IT IS HEREBY AGREED AND DECLARED, that until the hereditaments and premises hereby granted, or expressed so to be, shall be sold as aforesaid, it shall be lawful for the trustees or trustee for the time being of these presents, upon such request or at such discretion as aforesaid, to lease the same or any part thereof for any term of years not exceeding twenty-one years, to take effect in possession at the best rent that can reasonably be obtained for the same, without taking anything in the nature of a fine or premium, and under and subject to such covenants and conditions as the said trustees or trustee shall think proper: AND IT IS ALSO AGREED AND DECLARED, that (*Provision as to appointment of new trustees, supra, p. 231*): AND THE SAID A. B.

the residue of the said moneys, upon, &c. (*as in text*): AND IT IS HEREBY AGREED AND DECLARED, that until the said hereditaments and premises hereby granted, or expressed so to be, shall be sold as aforesaid, it shall be lawful for the said A. B. during his life, and after his decease for the trustees or trustee for the time being of these presents, with such consent or at such discretion as aforesaid, to lease, &c. (*as in text, substituting at the end "such covenants and conditions as the person or persons making such lease shall think proper"*): (*Power to appoint new trustees, and covenants for title*).

IN WITNESS, &c.

doth hereby for himself, his heirs, executors, and administrators covenant with the said E. F., G. H., and I. K., their heirs and assigns, THAT notwithstanding any act, deed, or thing by him the said A. B. done or executed, or knowingly suffered to the contrary, he the said A. B. now hath good right to grant the said hereditaments and premises in manner aforesaid free from incumbrances: AND FURTHER, that the said A. B., and all persons having or lawfully or equitably claiming any estate or interest in the said hereditaments and premises, or any part thereof, from, under, or in trust for him, shall and will from time to time and at all times after the said intended marriage at the cost of the estate, do and execute, or cause to be done and executed, all such acts, deeds, and things whatsoever, for further and more perfectly assuring the said hereditaments and premises, and every part thereof, unto the said E. F., G. H., and I. K., their heirs and assigns, to the uses and in manner aforesaid as by them shall or may be reasonably required.

CONVEYANCE  
OF LAND ON  
TRUST FOR  
SALE IN  
CONTEMPLA-  
TION OF A  
MARRIAGE.

IN WITNESS, &c.

#### NO XIV.

SETTLEMENT on the part of the intended HUSBAND of *the PROCEEDS of the sale of LAND conveyed upon TRUST for SALE by an Indenture of even date, and SETTLEMENT on the part of the intended WIFE who is an INFANT (a), of PERSONAL estate in POSSESSION and REVERSION, including a share in the PROCEEDS of LAND directed to be sold; POWER to WIFE to settle part of TRUST FUNDS on a FUTURE MARRIAGE; PROVISION for settling OTHER PROPERTY if any of WIFE; POWER to invest in PURCHASE of LAND and to ELECT to take SHARE of land in LIEU of the SETTLED SHARE of the PROCEEDS of such land.*

BY HUSBAND  
OF MONEY  
PRODUCED  
BY SALE OF  
REAL ESTATE  
AND BY  
INFANT WIFE  
OF PERSON-  
ALTY.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

(a) It will be borne in mind that a settlement made by an infant of reversionary property will not be binding if the wife survives her husband and the property has not fallen into possession during the coverture. To make a settlement of reversionary property which will be valid in all circumstances it is necessary to obtain the sanction of the Court under the 18 & 19 Vict. c. 43 (see *supra*, p. 190). In most cases, however, it is not thought desirable to incur the expense and delay of obtaining the sanction of the Court, and as the wife will not be allowed to take any benefit in the husband's settled property unless she confirms the settlement as to her own (see *Willoughby v. Middleton*, 2 J. & H. 344), there is seldom any practical inconvenience in relying on her doing so.



BY HUSBAND  
OF MONEY  
PRODUCED  
BY SALE OF  
REAL ESTATE  
AND BY  
INFANT WIFE  
OF PERSON-  
ALTY.

Recital of  
intended  
marriage.

That  
husband is  
owner of a  
farm.

That wife  
will upon  
marriage be  
entitled to  
stock.

That wife  
will upon  
marriage  
become also  
entitled to  
reversionary  
share in sum  
of stock,  
and also in  
money to  
arise from  
sale of land.

Agreement  
for settle-  
ment.

A. B. of, &c. (*intended husband*), of the first part, C. D., spinster, the eldest daughter of M. D. of, &c., and N., his wife, and an infant of the age of eighteen years or thereabouts (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K., of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnised, between the said A. B. and the said C. D.: AND WHEREAS the said A. B. is seised in fee simple of a messuage, farm, lands and hereditaments, known as the — Farm, situate at, &c.: AND WHEREAS the said C. D. will, upon her marriage, become entitled to a sum of £—— £3 per Cent. Consolidated Bank Annuities, standing in the name of X. Y., the surviving executor of the will of P. Q., late of, &c., deceased, in the books of the Governor and Company of the Bank of England, and representing a legacy of £—— sterling, thereby bequeathed to the said C. D.: AND WHEREAS under or by virtue of an indenture, dated, &c., and made, &c. (being the settlement made in contemplation of the marriage then intended, and shortly afterwards solemnised, between the said M. D. and N., his wife), and a deed poll of appointment under the hands and seals of the said M. D. and N., his wife, bearing even date with these presents, the said C. D. will upon the solemnisation of the said intended marriage, in case the same shall be solemnised before the expiration of twelve calendar months from the date of the said deed poll, become entitled in reversion expectant on the decease of the survivor of the said M. D. and N. his wife, to one moiety of the moneys, stocks, funds, and securities subject to the trusts of the said indenture of settlement, and which moneys, stocks, funds, and securities now consist of the following particulars (that is to say), the sum of £—— £3 per Cent. Reduced Bank Annuities, and the sum of £—— New £3 per Cent. Bank Annuities, standing in the names of W. X. and Y. Z., the present trustees of the said indenture, in the books of the Governor and Company of the Bank of England, and the moneys to arise from the sale of certain freehold lands and hereditaments situate at, &c., and which freehold hereditaments have been purchased with part of the moneys settled by the said indenture of settlement under a power in that behalf contained in the same indenture: AND WHEREAS upon the treaty for the said intended marriage it was agreed that such settlement should be made as hereinafter appears: AND WHEREAS in part pursuance of the said agreement by an indenture bearing even date with these presents and made between the same parties, the said A. B. has

conveyed the said freehold hereditaments to the use of the said A. B. and his heirs until the said intended marriage, and afterwards to the use of the said E. F., G. H., and I. K., their heirs and assigns, upon trust, upon such request, or at such discretion as therein mentioned, to sell the same and to receive the moneys to arise from such sale, and after paying and retaining thereout the costs and expenses attending the sale, to stand possessed of the residue of the said moneys, and of the rents and profits of the said hereditaments until the sale thereof, upon the trusts and with and subject to the powers and provisions declared by an indenture therein referred to (meaning these presents) (b): NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED between and by the parties hereto as follows:—

BY HUSBAND  
OF MONEY  
PRODUCED  
BY SALE OF  
REAL ESTATE  
AND BY  
INFANT WIFE  
OF PERSON-  
ALTY.

Witnessing  
part.

1. THE said A. B. and C. D. and all other necessary parties shall, at the cost of the trust estate, cause and procure the said sum of £—— £3 per Cent. Consolidated Bank Annuities, and also the said moiety to which the said C. D. will upon her said marriage become entitled of and in the trust funds and property subject to the trusts of the said indenture of settlement of the — day of —, to be respectively transferred, and paid to, or otherwise vested in the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called “the trustees or trustee”), as to the said sum of £—— £3 per Cent. Consolidated Bank Annuities as soon as conveniently can be after the solemnisation of the said intended marriage, and as to the said reversionary moiety when and so soon as the same shall fall into possession.

1. The trust  
funds of the  
intended  
wife to be  
vested in  
trustees.

2. THE trustees or trustee shall, upon the receipt of the several trust funds mentioned in Article 1, either retain the same respectively in their respective actual state of investment

2. Trustees  
upon receipt  
thereof to  
retain or  
convert  
same into

(b) If the last Precedent is in the form suggested in the note to p. 247, *supra*, the following will be substituted for the latter part of the above recital: “And from and after the solemnisation of the said intended marriage to the use of the said A. B. and his assigns during his life, without impeachment of waste, and after his decease to the use of the said E. F., G. H., and I. K., their heirs, and assigns, upon trust with the concurrence of the said A. B. during his life, and after his decease with such consent or at such discretion as therein mentioned, to sell the said hereditaments and premises, and to receive the moneys to arise from such sale (including, in case any such sale shall be made in the lifetime of the said A. B., such part of the said moneys as shall represent his life estate), and after paying and retaining,” &c. (*as above*).

BY HUSBAND  
OF MONEY  
PRODUCED  
BY SALE OF  
REAL ESTATE  
AND BY  
INFANT WIFE  
OF PERSON-  
ALTY.

money and  
to invest  
proceeds,  
and also  
proceeds of  
sale of here-  
ditaments  
comprised  
in deed of  
even date,  
with power  
to vary in-  
vestments.

(if any), or with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees or trustee, sell and convert into money the same, and shall, with such consent, or at such discretion as aforesaid, invest the moneys produced by such sale and conversion, and also such part (if any) of the said trust funds as shall consist of money, and also the moneys to arise from the sale of the hereditaments comprised in the said indenture bearing even date herewith, when and so soon as the same shall be received by them or him in some or one of the modes of investment hereinafter authorised, with liberty from time to time, with the like consent or at the like discretion to vary the said investments into or for others of the same or a like nature: THE moneys to arise from the sale of the said hereditaments, and the investments for the time being representing the same are hereinafter called "the husband's trust funds:" AND the trust funds by Article 1 agreed to be vested in the trustees or trustee, and the investments for the time being representing the same are hereinafter called "the wife's trust funds."

4, 5. (*Same as in Articles 3 and 4 of Precedent No. IX., supra*, pp. 226, 227.)

6. (*Power to appoint in favour of a future husband and the issue of a future marriage, as in Precedent No. X. Article 7, 7A, or 7B, supra*, pp. 235 to 238, substituting "the wife's trust funds" for "the settled trust funds" throughout).

7. Rents of  
heredita-  
ments until  
sold to go as  
income of  
husband's  
trust funds.

7. UNTIL the hereditaments comprised in the said indenture of even date herewith shall be sold as aforesaid, the net rents and profits of the same hereditaments or such part thereof as shall for the time being remain unsold, shall be paid and applied to the person or persons and in the manner to whom and in which the income of the husband's trust funds are hereinbefore directed to be paid and applied: PROVIDED ALWAYS that the said A. B. may during his life remain in the possession or receipt of the rents and profits of the said hereditaments, or such part thereof as shall remain unsold, with all the powers and privileges incident to the estate of a legal tenant for life unimpeachable for waste; and after his death the trustees or trustee may manage the said hereditaments or such part thereof as shall remain unsold in such manner as they or he shall think fit, with power in particular to fell timber for repairs or sale, and the proceeds of any timber which shall be felled and sold by the

trustees shall be treated as income for the purposes of these presents.

8, 9, 10. (*Agreement to settle other property of wife,—Investment clause, and Power to invest in purchase of land, as in precedent No. IX., supra*, pp. 228 to 230.)

11. IF at the decease of the survivor of the said M. D. and N., his wife, the said freehold hereditaments at —, or any part thereof, or any other hereditaments purchased with or out of the trust funds subject to the trusts of the said indenture of settlement of the — day of —, shall remain unsold, the trustees or trustee of these presents may, with such consent or at such discretion as aforesaid, take from the trustees or trustee for the time being of the said indenture of settlement, a conveyance or other assurance of an undivided moiety of the same hereditaments, in lieu of and in satisfaction for the moiety of the said C. D. of and in the moneys to arise from the sale of the same hereditaments; and in that case the trustees or trustee of these presents shall stand seised and possessed of the undivided moiety so to be assured to them or him as aforesaid of and in the said hereditaments, upon the same trusts and with and subject to the same powers and provisions, as the same moiety would have been subject to by virtue of these presents if the same had been purchased with the proceeds of any part of the wife's trust funds under Article 10.

12. THE trustees or trustee of these presents may approve of and allow, &c. (*Power to settle accounts, supra*, p. 219).

13. THE power of appointing new trustees, &c. (*Clause as to appointment of new trustees, supra*, p. 231).

14. THESE PRESENTS shall be void if the said intended marriage shall not be solemnised within twelve calendar months from the date hereof.

IN WITNESS, &c.

No. XV.

SETTLEMENT *upon the SECOND MARRIAGE of a LADY, in Exercise of POWERS in a FORMER SETTLEMENT; AGREEMENT to settle OTHER PROPERTY of WIFE in favour of ISSUE of BOTH MARRIAGES.*

THIS INDENTURE, made the — day of —, 18—, BETWEEN C. B. of &c., widow (*intended wife*), of the first part, X. Y. of, &c. (*intended husband*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c., of the third part: WHEREAS by

BY HUSBAND  
OF MONEY  
PRODUCED  
BY SALE OF  
REAL ESTATE  
AND BY  
INFANT WIFE  
OF PERSON-  
ALTY.

11. Power  
to trustees  
to elect to  
take moiety  
in land in  
lieu of  
moiety  
settled by  
wife of  
proceeds of  
sale.

12. Power to  
settle  
accounts.

13. Power to  
appoint new  
trustees.

14. Settle-  
ment to be  
void if  
marriage is  
not within  
twelve  
months.

UPON  
SECOND  
MARRIAGE  
OF A LADY

Parties.

Recital of  
settlement  
on first  
marriage.

UPON  
SECOND  
MARRIAGE  
OF A LADY.

an indenture dated, &c., and made, &c. (being the settlement made in consideration of the marriage of the said C. B., then C. D., with her deceased husband, A. B.), it was agreed and declared (among other things), that the trustees or trustee for the time being of the said indenture, should after the decease of such one of them the said A. B. and C. D. as should first die, pay the income of the trust funds thereby settled, and which are therein called "the husband's trust funds" and "the wife's trust funds" respectively, to the survivor of them during his or her life, and should after the decease of such survivor hold the said trust funds IN TRUST for all or such one or more of the children and remoter issue of the said then intended marriage as the said A. B. and C. D. or the survivor of them should in manner therein mentioned appoint, and in default of such appointment, IN TRUST for all the children of the said then intended marriage, who being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry, in equal shares, with an ultimate trust in default of issue of the said intended marriage as regards the wife's trust funds for the said C. D., her executors, administrators, and assigns: AND it was also agreed and declared that, &c. (*set out fully power to appoint to future husband and to issue of future marriage, being Article 7A of Precedent X.*): AND WHEREAS the said A. B. died on the — day of —, 18—, leaving — children (*state number of children*), all of whom are infants and unmarried: AND WHEREAS the trust funds in the said indenture of settlement called "the husband's trust funds," consist of or are represented by the following particulars, namely (*state particulars*), and the trust funds in the said indenture of settlement called "the wife's trust funds," now consist of or are represented by the following particulars, namely (*state particulars*): AND WHEREAS a marriage is intended shortly to be solemnised between the said C. B. and the said X. Y.: AND upon the treaty for the said intended marriage it was agreed that such settlement should be made as is hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED, between and by the parties hereto, and the said C. B., in exercise of all powers for this purpose vested in her by the said indenture of settlement or otherwise, doth, with the privity and consent of the said X. Y. (testified by his executing these presents), direct and appoint as follows:—

Death of  
first hus-  
band leav-  
ing child-  
ren.

Present  
state of  
trust funds.

Agreement  
for intended  
marriage  
and for  
settlement.

Witnessing  
part.

Agreement  
and appoint-  
ment.

UPON  
SECOND  
MARRIAGE  
OF A LADY.

1. AFTER the said marriage the said E. F., G. H., and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor or other the trustees or trustee for the time being of the said indenture of settlement (hereinafter called "the trustees or trustee") shall pay the income of all the trust funds settled by the said indenture to the said C. B., so that during her now intended coverture the same shall be for her sole and separate use, and she shall not have power to dispose thereof in the way of anticipation.

1. Wife to receive income of all the settled trust funds for her separate use without power to anticipate.

2. If the said X. Y. shall survive the said C. B., the income of one moiety of the trust funds in the said indenture of settlement and hereinafter called the wife's trust funds, shall after the decease of the said C. B. be paid to the said X. Y. during his life [or unless and until he shall marry again or shall assign or charge the said income, or any part thereof, or become bankrupt, or do or suffer any other thing whereby the said income, or any part thereof, if belonging absolutely to him, would become vested in any other person or persons, in either of which events the interest of the said X. Y. shall cease as if he were dead].

2. Income of a moiety of wife's trust funds to be paid to her husband [or until second marriage, bankruptcy, &c.].

3. FOR the purposes of these presents the wife's trust funds shall be considered as divided into so many equal parts as there shall be children of the said C. B., as well by the said A. B. deceased as by the said X. Y., who, being a son or sons, attain the age of twenty-one years, or being a daughter or daughters, attain that age or marry: AND so many of the said equal parts as there shall be children of the said C. B. by the said X. Y., who, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, shall form together the fund which is hereinafter referred to as "the future children's trust fund."

3. Certain proportion of wife's trust funds to form "future children's trust fund."

4. THE future children's trust fund shall, after the decease of the said C. B., and subject to the interest of the said X. Y., under Article 2, in exoneration so far as the same will extend of the residue of the wife's trust funds go and be held IN TRUST for, &c. (*Trust for issue of now intended marriage as husband and wife or survivor shall appoint, and in default of appointment, for children equally, and Hotchpot clause, mutatis mutandis, supra, p. 227.*)

4. Trusts of future children's trust funds.

5. (*Advancement clause, supra, p. 227, substituting X. Y. and C. B. for A. B. and C. D.*)

6. THE power of appointment given to the said C. B. by the

6. Power of appoint-

UPON  
SECOND  
MARRIAGE  
OF A LADY.

ment in  
settlement  
in favour of  
issue of  
former  
marriage to  
remain in  
force.

7. Ultimate  
trusts in  
case of no  
issue of  
either  
marriage.

8. Agree-  
ment to  
settle other  
property of  
wife.

said indenture of settlement in favour of all or any of her issue by the said A. B. deceased, shall remain in full force so far as regards that part of the wife's trust funds which is not hereby appointed in favour of the issue of the now intended marriage.

7. If there shall be no issue of the said C. B., either by the said A. B. deceased, or by the said X. Y., in whom the wife's trust funds shall become absolutely vested under the trusts and powers of the said indenture of settlement, or of these presents, then and in such case, and subject to the interest of the said X. Y., under Article 2, the trustees or trustee shall stand possessed of the wife's trust funds, IN TRUST for, &c. (*Ultimate trust for appointees by will of wife or for wife absolutely, or her next of kin, supra, p. 227.*)

8. ALL, &c. (*Agreement to vest in trustees other property of wife, supra, p. 228, but with the following variation in the trusts*): UPON TRUST that the trustees or trustee shall, at such time or times as they or he shall think fit, but as to reversionary property not until it shall fall into possession, sell, call in, and convert into money all such part of the said property as shall not consist of money or of investments of the nature authorised by the said indenture of settlement, and shall stand possessed of such part of the said property as shall consist of authorised investments, or of money uninvested, and also of the moneys to arise from such sale, calling in, and conversion as aforesaid: UPON the trusts, and with and subject to the powers and provisions in and by the said indenture of settlement and these presents declared and contained of and concerning the wife's trust funds, or the moneys to arise from the sale and conversion thereof, or of such of them as shall be then subsisting and capable of taking effect, and shall, in the meantime, and so long as any property hereinbefore directed to be sold and converted shall remain unsold and unconverted, pay the rents and income thereof to the person or persons and in the manner to whom and in which the income of the wife's trust funds shall, for the time being, be payable or applicable under the said indenture of settlement and these presents: PROVIDED ALWAYS, &c. (*Proviso as to any part of property consisting of annuity or income, supra, p. 228, substituting at the end the words "under the said indenture of settlement or these presents" for the words "under the foregoing trusts."*)

9. Settle-  
ment to be

9. THESE presents shall be void if the said intended marriage

shall not be solemnised within twelve calendar months from the date hereof.

IN WITNESS, &c.

UPON  
SECOND  
MARRIAGE  
OF A LADY.

void if  
marriage is  
not had  
within  
twelve  
months.

No. XVI.

SETTLEMENT of a sum of STOCK in the usual form,  
EXCEPT that the ELDEST SON entitled as TENANT IN  
TAIL to REAL ESTATE under a SETTLEMENT of even  
date is to be EXCLUDED.

ON  
CHILDREN  
(EXCLUDING  
ELDEST SON).

THIS INDENTURE, made the — day of —, 18—, Parties.

BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D.

of, &c. (*intended wife*), of the second part, and E. F. of, &c.,

G. H. of, &c., I. K. of, &c. (*trustees*), of the third part: WHEREAS

a marriage has been agreed upon, and is intended shortly to be

solemnised between the said A. B. and the said C. D.: AND

WHEREAS by an indenture bearing even date with these presents,

and made between (*parties*) in consideration of the said in-

tended marriage, divers messuages, lands and hereditaments, in

the county of —, therein particularly described, have been

settled to the use of the said A. B. for his life with remainder

(subject to a jointure rent-charge payable to the said C. D.) to

the use of the first and other sons of the said intended marriage

successively in tail male, with divers remainders over: AND

WHEREAS upon the treaty for the said intended marriage it was

agreed that the sum of £10,000 consolidated £3 per Cent.

Annuities belonging to the said C. D. should be settled upon the

trusts and in the manner hereinafter expressed, and the same

has accordingly been transferred into the names of the said

E. F., G. H., and I. K., in the books of the Governor and

Company of the Bank of England: NOW THIS INDENTURE

WITNESSETH that in consideration of the said intended

marriage it is hereby agreed and declared as follows:—

1. THE said E. F., G. H. and I. K., and the survivors and survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee") shall stand possessed of the said sum of £— consolidated £3 per Cent. Annuities, IN TRUST for the said C. D., until the said intended marriage shall be solemnised: AND after the solemnisation thereof shall either retain, &c. (*trust to retain*

Recitals.

Agreement  
for mar-  
riage.

Settlement  
of real estate  
by deed of  
even date.

Agreement  
for settle-  
ment of  
stock.

Witnessing  
part.

1. Trustees  
to hold  
stock for  
wife until  
marriage  
and then to  
retain or  
change in-  
vestments.



ON  
CHILDREN  
(EXCLUDING  
ELDEST SON).

2. Trusts for  
wife and  
husband and  
issue.

*stock or convert and invest, and vary investments, supra, p. 202).*

2. The trustees or trustee shall, &c. (*trust to pay income to wife for life for her separate use, without power of anticipation, and to husband for life, supra, p. 208*): AND from and after the decease of the survivor of the said A. B. and C. D. shall stand possessed of the trust funds hereby settled, IN TRUST for the child, or all or any of the children of the said intended marriage (except a son or sons excluded by Article 3, in the event therein mentioned), or any issue of such child or children (such issue being born during the lives of the said A. B. and C. D., or the life of the survivor of them), at such ages or times, or age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares if more than one, upon such conditions, and in such manner as the said (*husband and wife, or survivor, shall appoint, supra, p. 202*): AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said intended marriage (except a son or sons excluded by Article 3, in the event therein mentioned), who, being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry under that age, in equal shares, and if there shall be but one such child, then the whole to be in trust for such one child (*Hotchpot clause, supra, p. 202*), and if there shall be no child of the said intended marriage who shall attain a vested interest in the said trust funds under the foregoing trusts, then IN TRUST for the said A. B., her executors, administrators and assigns.

3. Eldest  
son to be  
excluded, if  
any other  
child who  
attains  
vested in-  
terest.

3. The first born or only son of the said intended marriage, and also every other son (if any), who at his birth, or during his minority shall be or become an eldest or only son entitled for the time being under the limitations of the said indenture bearing even date with these presents, to the hereditaments thereby settled for an estate in tail male in possession or in remainder immediately expectant on the decease of the said A. B., shall be excluded from all share in the trust funds hereby settled, if there shall be any other child or children of the said intended marriage, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age, or marry, but not otherwise (*Advancement and remaining clauses as in former Precedents*).

IN WITNESS, &c.

## No. XVII.

SETTLEMENT *by intended HUSBAND and WIFE for the benefit of their respective ISSUE as well by the INTENDED MARRIAGE as by any FUTURE MARRIAGE, with appropriate Clauses (a).*

FOR ISSUE OF  
HUSBAND  
AND WIFE  
RESPEC-  
TIVELY BY  
ANY MAR-  
RIAGE.

THIS INDENTURE, &c. (*Parties. Recitals of agreement for intended marriage, and for settlement and transfer of trust funds by husband and wife respectively to the trustees*): NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED between and by the parties hereto as follows;—

Parties and  
recitals.

Witnessing  
part.

1, 2. (*Trusts for husband and wife respectively until marriage, and for investment and varying investments.*)

1, 2. Trusts  
until mar-  
riage and  
for invest-  
ment, &c.

3. THE trustees or trustee shall pay the income of the husband's trust funds to the said A. B. during his life, and after his decease to the said C. D., if she shall survive him, during her life, and after the decease of the survivor of the said A. B. and C. D., shall stand possessed of the husband's trust funds, IN TRUST for such child, children, or remoter issue of the said A. B., whether by his now intended marriage or by any future marriage, at such ages or times or age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said A. B. shall by any deed or deeds, or by his will appoint: [AND in default of such appointment, and so far as any such appointment shall not extend, then IN TRUST for such child, children, or remoter issue of the now intended marriage at such ages or times, age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, upon such conditions, and in such manner as the said C. D., if she shall survive the said A. B., shall, by any deed

3. Income  
of husband's  
trust funds  
to go to  
husband  
and wife  
successively  
for life and  
after death  
of survivor  
same funds  
to go to issue  
of husband  
by any  
marriage  
as he shall  
by deed or  
will appoint,

and in  
default of  
such ap-  
pointment  
then for  
issue of in-  
tended mar-  
riage as wife  
surviving  
shall by deed  
or will  
appoint;

(a) Where it is intended that only a limited portion of the settled property shall be disposable in favour of the issue of a future marriage, as is generally the case, the proper form is to make the settlement in the first instance in favour only of the issue of the intended marriage, with powers to the husband and wife respectively to make a settlement to the agreed amount in case of a future marriage. See precedent No. X., *supra*. The powers thereby given to the wife can be easily adapted so as to be made applicable to a husband.

FOR ISSUE OF  
HUSBAND  
AND WIFE  
RESPEC-  
TIVELY BY  
ANY MAR-  
RIAGE.

and in  
default of  
such ap-  
pointment  
for children  
of husband  
by any mar-  
riage  
equally to  
vest at usual  
periods.  
Hotchpot  
clause.

4. Power to  
husband to  
appoint life  
interest in  
moiety of  
husband's  
trust funds  
to a future  
wife.

5. Income of  
wife's trust  
funds to go  
to wife and  
husband  
successively  
for life, and  
after death  
of survivor  
for issue of  
wife, &c.

or deeds, or by her will appoint:] (b) AND in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said A. B., as well by his now intended marriage as by any future marriage or marriages, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: PROVIDED ALWAYS, that, &c. (*Hotchpot clause, supra*, p. 202). AND if, &c. (*Ultimate trust for husband absolutely, supra*, p. 203).

4. NOTWITHSTANDING the trusts declared by the last preceding article, it shall be lawful for the said A. B., if he shall marry again, and before or after any such future marriage, by any deed or deeds, or by his will, to appoint that the income of any part not exceeding one moiety of the husband's trust funds shall be paid to any wife of him who may survive him during her life, or for any less period: PROVIDED ALWAYS that any income payable to a future wife under any exercise of this power shall be payable out of that part of the husband's trust funds to which the issue of a future marriage or marriages of the said A. B. shall for the time being be entitled or presumptively entitled under these presents, or under any such appointment as aforesaid, so far as the same will extend, in exoneration of that part of the husband's trust funds to which the issue of the now intended marriage shall for the time being be entitled or presumptively entitled as aforesaid.

5. THE trustees or trustee shall pay the income of the wife's trust funds to, &c. (*wife for life for her separate use, without power of anticipation, and after her death to husband for life, supra*, p. 208), and after the decease of the survivor of them, the said A. B. and C. D. shall stand possessed of the wife's trust funds, IN TRUST, &c. (*Trusts for issue of wife by present or future marriage as she shall by deed or will appoint [and in default of such appointment, for issue of intended marriage as husband if he survives wife shall by deed or will appoint], and in default of such appointment, for children of wife by present and future marriages equally,—Hotchpot clause, as in Article 3, mutatis mutandis*). AND if, &c. (*Ultimate trust for wife's appointees by will, and in default of appointment for her absolutely, or for her next of kin, supra*, pp. 208, 209.)

(b) The words in brackets will be omitted if, as is not unusual in such a case, the wife is not to have a power of appointment.

6. NOTWITHSTANDING, &c. (*Power to wife to appoint income for a moiety of wife's trust funds to future husband, as in Article 4, mutatis mutandis*).

FOR ISSUE OF  
HUSBAND  
AND WIFE  
RESPECTIVELY BY  
ANY MARRIAGE.

7. THE trustees or trustee may at any time or times raise any part or parts not exceeding together a moiety of the vested or presumptive share of any child or grandchild of the said A. B. and C. D. or either of them, and may apply the money to be so raised for the advancement, preferment, or benefit of such child or grandchild as the trustees or trustee shall think fit; but so that no such advancement shall be made during the continuance of any prior interest or interests under these presents in the money proposed to be advanced without the consent in writing of the person or persons having such prior interest or interests.

6. Power to wife to appoint life interest in moiety of wife's trust funds to future husband.

7. Advancement clause.

8. If there shall be no child of the now intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age, it shall be lawful for the said A. B., if he shall survive the said C. D., as to the husband's trust funds, or for the said C. D., if he shall survive the said A. B., as to the wife's trust funds, by any deed or deeds to revoke the trusts, powers and provisions declared and contained by and in these presents of and concerning the husband's trust funds or the wife's trust funds (as the case may be), and to declare new or other trusts concerning the same: AND this power may be exercised while it shall be uncertain whether the event shall happen in which the same is hereby made exercisable, and shall in such case take effect according to the event.

8. Power in case of no issue of intended marriage for survivor to revoke trusts of his or her trust funds.

(*Agreement to settle other property of wife, investment and appointment of new trustees clauses, and settlement to be void if marriage not within twelve months, supra, p. 228 to 231.*)

IN WITNESS, &c.

## No. XVIII.

CONVEYANCE  
OF  
UNDIVIDED  
SHARE IN  
REVERSION  
OF FREE-  
HOLDS AND  
LEASEHOLDS,  
IN TRUST  
FOR SALE.

---

CONVEYANCE *and* ASSIGNMENT *by the intended*  
HUSBAND *of an* UNDIVIDED SHARE IN REVERSION  
*of* FREEHOLDS *and* LEASEHOLDS *to* TRUSTEES *on*  
*trust to* SELL *either AFTER the determination of the*  
PRIOR LIFE *estate or DURING its* CONTINUANCE *with*  
*the concurrence of the* TENANT FOR LIFE, *and to*  
*hold the* PROCEEDS *upon the* TRUSTS *declared by a*  
DEED *of* EVEN DATE.

Parties. THIS INDENTURE, made the — day of —, BETWEEN  
A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c.  
(*intended wife*), of the second part, and E. F. of, &c., G. H. of,  
&c., and I. K. of, &c. (*trustees*), of the third part: WHEREAS a  
marriage has been agreed upon and is intended shortly to be  
solemnised between the said A. B. and the said C. D.: AND  
WHEREAS (*Recite will of X. Y. under which A. B. is entitled to*  
*an undivided third share of freeholds and leaseholds, subject to*  
*the life interest of R. B. his father*); AND WHEREAS upon the  
treaty for the said intended marriage it was agreed that the said  
undivided part or share of the said A. B., of and in the said  
freehold and leasehold hereditaments should be respectively con-  
veyed and assigned unto the said E. F., G. H., and I. K. their  
heirs, executors, administrators, and assigns respectively, upon  
the trusts and with and subject to the powers and provisions  
hereinafter declared and contained concerning the same: NOW  
THIS INDENTURE WITNESSETH as follows:—

Recite  
agreement  
that share  
should be  
conveyed  
and assigned  
to trustees.

Witnessing  
part.

1. Husband  
conveys  
share of  
freeholds  
(subject to  
prior life  
interest)  
to trustees.

1. IN consideration of the said intended marriage, the said  
A. B. doth hereby grant unto the said E. F., G. H., I. K., and  
their heirs, ALL THAT the one undivided third part or share of  
the said A. B., of and in ALL, &c. (*Freehold parcels,—general*  
*words,—and all the estate, &c.*): TO HAVE AND TO HOLD the  
undivided part or share hereby granted of and in the said free-  
hold hereditaments (subject to the said estate for life therein of  
the said R. B.) unto the said E. F., G. H. and I. K., and their  
heirs, TO THE USE of the said A. B., his heirs and assigns,  
until the said intended marriage shall be solemnised: AND FROM  
AND AFTER the solemnisation thereof, TO THE USE of the said

E. F., G. H. and I. K., their heirs and assigns, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

2. IN consideration of the said intended marriage, the said A. B. doth hereby assign unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, ALL THAT the one undivided third part or share of the said A. B., of and in ALL THAT &c. (*describe leasehold parcels as in lease*); ALL which hereditaments and premises were by an indenture dated the — day of —, and made between, &c. (*parties*), demised unto the said (*testator*), for the term of ninety-nine years thence next ensuing, at the yearly rent of £—, and subject to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, his executors, administrators, and assigns, to be observed and performed (*and all the estate*): TO HAVE AND TO HOLD the undivided part or share hereby assigned of and in the said leasehold hereditaments unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, for the residue of the said term of ninety-nine years, subject to the said estate for life therein of the said R. B., and subject also to a proportionate part of the said yearly rent of £—, reserved by the said indenture of lease, and to the covenants and conditions in the same indenture contained, and on the part of the lessee, his executors, administrators, and assigns, to be observed and performed so far as the same affect the said undivided share hereby assigned, or expressed so to be, Nevertheless, IN TRUST for the said A. B., his executors, administrators, and assigns, until the said intended marriage shall be solemnised, AND FROM AND AFTER the solemnisation thereof, upon the trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

CONVEYANCE  
OF  
UNDIVIDED  
SHARE IN  
REVERSION  
OF FREE-  
HOLDS AND  
LEASEHOLDS  
IN TRUST  
FOR SALE.

2. Husband  
assigns  
undivided  
share of  
leaseholds  
to trustees,

subject to  
prior life  
interest.

3. THE said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee") shall, upon the request in writing of the said A. B. during his life, and after his decease then upon the request in writing of the said C. D. during her life, and after the decease of the survivor of the said A. B. and C. D. at the discretion of the trustees or trustee sell the undivided part or share hereby granted and assigned of and in the said freehold and leasehold premises respectively, at any time or times after the decease of the said

3. Trustees  
shall hold  
share of  
freeholds  
and lease-  
holds.

In trust to  
sell.

CONVEYANCE  
OF  
UNDIVIDED  
SHARE IN  
REVERSION  
OF FREE-  
HOLDS AND  
LEASEHOLDS  
IN TRUST  
FOR SALE.

---

R. B. or in the lifetime of the said R. B., if he shall concur in such sale, but not otherwise, with liberty to sell the same part or share alone or in conjunction with the other undivided parts or shares of the said premises, or any or either of them, as the trustees or trustee shall think fit, and shall receive all the moneys to arise from the sale of the said undivided part or share, whether such sale shall be made in the lifetime of the said R. B. or after his death (including in the former case such portion of the said moneys as shall represent the life estate of the said R. B.), and shall with and out of the said moneys in the first place pay and retain the costs and expenses attending such sale, and shall stand possessed of the residue of the said moneys, and also of the rents and profits of the said undivided part or share of and in the said premises, or such part thereof as shall not be sold in the lifetime of the said R. B. from and after the decease of the said R. B., and until the sale thereof, upon such trusts and with and subject to such powers and provisions as are or shall be declared concerning the same in and by an indenture already prepared and engrossed, bearing or intended to bear even date with these presents, and made or intended to be made between, &c. (*parties*).

4. Power  
to lease.

4. UNTIL the said undivided part or share hereby granted and assigned of and in all the said freehold and leasehold premises shall be sold as aforesaid, it shall be lawful for the trustees or trustee, upon such request or at such discretion as aforesaid, to lease the same or any part thereof, either alone or in conjunction with the other undivided parts or shares of the same premises, or any of them, for any term of years not exceeding twenty-one years, to take effect in possession at the best rent that can reasonably be obtained for the same, without taking anything in the nature of a fine or premium, and under and subject to such covenants and conditions as the trustees or trustee shall think proper.

5. Power to  
make parti-  
tion.

5. IT shall be lawful for the trustees or trustee at any time or times, upon such request or at such discretion as aforesaid, to concur with the owner or owners of the other undivided parts or shares of the said freehold and leasehold premises respectively in making a partition of the same premises or any of them, and upon any such partition to give or receive any money for equality of partition, with power to execute assurances and do all other acts and things for completing such partition which the trustees or trustee shall think proper, and the trustees or trustee

shall stand and be seised and possessed of the premises to be acquired under any such partition as aforesaid, and of any moneys which may be received for equality of partition as aforesaid, upon the trusts and with and subject to the powers and provisions hereinbefore expressly and by reference declared and contained concerning the said undivided part or share hereby granted and assigned of and in the said freehold and leasehold premises, and the moneys to arise from the sale of the same undivided part or share respectively, AND if any moneys shall be required to be paid by the trustees or trustee for equality of partition as aforesaid, the same may be so paid out of any moneys in their or his hands arising from any sale which may have been previously made under the aforesaid trust in that behalf.

CONVEYANCE  
OF  
UNDIVIDED  
SHARE IN  
REVERSION  
OF FREE-  
HOLDS AND  
LEASEHOLDS,  
IN TRUST  
FOR SALE.

6. THE power, &c. (*Clause as to appointment of new trustees supra*, p. 231).

7. THE said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns respectively, THAT notwithstanding any act, deed, or thing by the said A. B., or the said testator X. Y., done or executed, or knowingly suffered to the contrary, the said A. B. now hath good right to grant and assign the said undivided part or share of and in the said freehold and leasehold premises in manner aforesaid free from incumbrances: AND THAT the said A. B., and all persons lawfully or equitably claiming from, under, or in trust for him, or from or under the said X. Y., shall and will, from time to time and at all times after the said intended marriage, at the cost of the persons requiring the same, do and execute, or cause to be done and executed, all such acts, deeds, and things for further or more perfectly assuring the said part or share of freehold and leasehold hereditaments and premises unto the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns respectively in manner aforesaid as by them shall or may be reasonably required.

7. Covenants  
by husband  
for title.

IN WITNESS, &c.



## No. XIX.

APPOINT-  
MENT AND  
ASSIGNMENT  
OF PORTION,  
CHARGED ON  
REAL  
ESTATE.

APPOINTMENT *in contemplation of a* DAUGHTER'S  
MARRIAGE *of a* SUM *of* MONEY, *to be raised under*  
*the* TRUST *of a* TERM *for raising* PORTIONS *for*  
YOUNGER CHILDREN *contained in a* SETTLEMENT  
*of* REAL ESTATE, *to* TRUSTEES *upon* TRUSTS *declared*  
*by a* DEED *of even date* (a).

Recite set-  
tlement on  
marriage of  
father and  
mother.

THIS INDENTURE, made the — day of —, 18—,  
BETWEEN N. D., of, &c. (*father of intended wife*), of the first  
part, C. D., of, &c. (*intended wife*), of the second part, A. B. of,  
&c. (*intended husband*), of the third part, and E. F. of, &c., and  
G. H. of, &c., and I. K. of, &c. (*trustees*), of the fourth part :  
WHEREAS by an indenture of release, dated the — day of  
—, grounded on a lease for a year, and made between  
the said N. D., of the first part, O. D. now the wife of  
the said N. D. (then O. P., spinster), of the second part,  
&c. (*other parties*) (being a settlement made in contempla-  
tion of the marriage then intended and shortly afterwards  
solemnised between the said N. D. and the said O. P.),  
the manor of —, and the capital and other messuages, lands,  
tenements, and hereditaments, situate in the parish of — in  
the county of —, in the said indenture particularly described,  
were settled and assured to the use of the said N. D. and his  
assigns during his life, without impeachment of waste, with  
remainder after his decease to the use of the said O. P., if she  
should survive the said N. D., should receive thereout, during  
her life, a yearly rent-charge of £— for her jointure, with  
usual powers for recovering the same when in arrear, and subject  
thereto, to the use of the said P. Q. and R. S., their executors  
administrators, and assigns, for the term of one thousand years,  
computed from the decease of the said N. D., upon the trusts  
therein declared concerning the same, and in part hereinafter  
mentioned, with remainder to the first and other sons of the said  
N. D. by the said O. P. successively in tail male, with remainders  
over ; and it was declared that the said premises were limited to  
the said P. Q. and R. S. their executors, administrators, and  
assigns, for the said term of one thousand years as aforesaid, upon

(a) See note, *supra*, p. 220.

trust, in the first place, to secure in manner therein mentioned, the regular payment of the said yearly rent-charge of £—— and in the next place, upon trust that if there should be any child or children of the said N. D. by the said O. P. (other than an eldest or only son entitled for the time being to the first estate tail in the said hereditaments under the limitations of the said indenture), then, and in such case the said P. Q. and R. S., or the survivor of them, or the executors or administrators of such survivor, should after the decease of the said N. D., or in his lifetime upon his request in writing, levy and raise, in manner therein mentioned, as and for the portion or portions of such child or children (other than as aforesaid) the sum of money therein and hereinafter mentioned (that is to say), if there should be but one such child, the sum of £——, and if there should be two such children and no more, the sum of £——; and if there should be three or more such children, the sum of £—— : the sum of £——, £——, or £——, as the case might be, go and be paid to all or any of the children of the said N. D. by the said O. P., in such shares, and in such manner as the said N. D. should by any deed or deeds, with or without power of revocation and new appointment, or by his will, appoint: AND WHEREAS there are six children of the said N. D. by the said O., his wife (other than and besides their eldest son): AND WHEREAS a marriage is intended shortly to be solemnised between the said C. D., who is one of the said children and the said A. B.: AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said N. D. should appoint the sum of £——, part of the money raiseable for portions as aforesaid, as the share of the said C. D., and that the said C. D. with the privity of the said A. B. should settle the same upon the trusts hereinafter mentioned, and it was further agreed that the appointment should be made at the request of the said C. D. and A. B. directly to the said E. F., G. H., and I. K., as the trustees of the said intended settlement in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH that the said N. D., in exercise and execution of the power for this purpose vested in him by the said indenture of settlement as aforesaid, and of all other powers (if any) him hereunto enabling, doth hereby at the request of the said C. D. and A. B. (testified by their respectively executing these presents) Appoint, that if the said intended marriage between the said C. D. and A. B. shall take effect before the expiration of twelve calendar

APPOINT-  
MENT AND  
ASSIGNMENT  
OF PORTION  
CHARGED ON  
REAL  
ESTATE.

That there  
are six  
younger  
children,  
and intended wife  
is one.

Witnessing  
part.  
Father  
appoints  
portion to  
daughter  
to be a  
vested in-  
terest on  
marriage.

APPOINT-  
MENT AND  
ASSIGNMENT  
OF PORTION  
CHARGED ON  
REAL  
ESTATE.

months from the date of these presents, the sum of £—, part of the sum of money by the said indenture directed to be raised for the portions of younger children as aforesaid, shall be the portion of the said C. D., and shall be paid to the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents as soon as conveniently can be after the decease of the said N. D., with interest thereon after the rate of £4 per cent. per annum, computed from the decease of the said N. D., To the intent that the said trustees or trustee shall stand possessed of the said sum of £— and the interest thereof, upon such trusts, and with and subject to such powers and provisions as are or shall be expressed and declared concerning the same by an indenture already prepared and engrossed, bearing or intended to bear, even date with these presents, and made, or intended to be made between, &c. (*parties*).

Clause as  
to appoint-  
ment of  
new  
trustees

AND IT IS DECLARED that (*Clause as to appointment of new trustees, supra, p. 231*).

IN WITNESS, &c.

## No. XX.

SETTLEMENT  
OF PROCEEDS  
OF SALE OF  
REVERSION-  
ARY SHARE  
OF FREE-  
HOLDS AND  
LEASEHOLDS,  
ETC.

SETTLEMENT *by the intended HUSBAND of the PROCEEDS of sale of a Share of FREEHOLDS and LEASEHOLDS conveyed to TRUSTEES in trust for Sale by Deed of even date, and by the intended WIFE of a PORTION CHARGED ON REAL ESTATE.*

Parties.

Recital of  
intended  
marriage.

Deed of  
even date  
being con-  
veyance by  
husband of  
reversionary  
moiety of  
freeholds  
and lease-  
holds upon  
trust for  
sale,

THIS INDENTURE, made the — day of —, 18— BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnised between the said A. B. and the said C. D.: AND WHEREAS by an indenture bearing even date with these presents, and made between, &c., the said A. B., in consideration of the said intended marriage, has conveyed and assigned one undivided third part or share of and in certain freehold and leasehold hereditaments therein described unto the said E. F., G. H., and I. K., their heirs, executors, administrators, and assigns, subject

to the estate for life therein of R. B. (the father of the said A. B.), UPON trust after the solemnisation of the said intended marriage, that the trustees or trustee for the time being of the said indenture, shall upon such request or at such discretion as therein mentioned, sell the said undivided part or share of and in the said several freehold and leasehold premises at any time or times after the decease of the said R. B., or in his lifetime if he shall concur in the said sale, but not otherwise: AND shall receive all the moneys to arise from the sale of the said undivided share, whether such sale shall be made in the lifetime of the said R. B., or after his death (including in the former case such portion of the said moneys as shall represent the life estate of the said R. B.), and shall with and out of the said moneys in the first place pay and retain the costs and expenses attending such sale, and shall stand possessed of the residue of the said moneys, and also of the rents and profits of the said undivided share of the said premises from and after the decease of the said R. B., and until the sale thereof, upon the trusts, and with and subject to the powers and provisions therein mentioned or referred to, being the trusts, powers, and provisions hereinafter declared and contained concerning the same: AND in the said indenture now in recital is contained a power enabling the said trustees or trustee thereof to concur with the owner of the other undivided shares of the said premises, or any of them, in making partition thereof, with liberty to give or receive any money for equality of partition, and a declaration that the said trustees or trustee shall stand possessed of the premises to be acquired under any such partition as aforesaid, and also of any moneys which may be received for equality of partition as aforesaid, upon the trusts and with and subject to the powers and provisions thereinbefore expressly and by reference declared and contained concerning the undivided part or share thereby granted and assigned respectively of and in the said freehold and leasehold premises, and the moneys to arise from the sale of the same undivided share respectively: AND WHEREAS by another indenture bearing even date with these presents, and made between, &c. (*parties*), the said N. D. has at the request of the said C. D. and A. B. appointed the sum of £—— part of a sum of money raiseable for portions under an indenture of settlement therein referred to and charged on real estate, and which sum of £—— will become payable on the decease of the said N. D. unto the said E. F., G. H., and I. K.,

SETTLEMENT  
OF PROCEEDS  
OF SALE OF  
REVERSION-  
ARY SHARE  
OF FREE-  
HOLDS AND  
LEASEHOLDS,  
ETC.

with power  
of partition.

Another  
deed of even  
date being  
appoint-  
ment of wife  
of portion  
and assign-  
ment of  
same by her  
to trustees.

SETTLEMENT  
OF PROCEEDS  
OF SALE OF  
REVERSION-  
ARY SHARE  
OF FREE-  
HOLDS AND  
LEASEHOLDS,  
ETC.

Witnessing  
part.

1. Declara-  
tion that  
trustees  
shall stand  
possessed of  
proceeds of  
sale of share  
of freeholds  
and lease-  
holds,  
and also of  
said portion,  
upon trust  
to invest.

their executors, administrators, and assigns, upon the trusts, and with and subject to the powers and provisions therein referred to, being the trusts, powers, and provisions hereinafter declared and contained concerning the same: NOW THIS INDENTURE WITNESSETH, that in consideration of the said intended marriage, IT IS HEREBY AGREED AND DECLARED as follows:—

1. IF the undivided part or share granted and assigned by the first hereinbefore recited indenture of and in the said freehold and leasehold premises respectively, or any part thereof, or any hereditaments which may be acquired by virtue of any partition made under the power in that behalf contained in the same indenture, shall be sold after the decease of the said R. B., or if any moneys shall be received for equality of partition under any such partition as aforesaid, the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs, executors, or administrators respectively of such survivor or other the trustees or trustee for the time being of these presents (hereinafter called "the trustees or trustee"), shall, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor at the discretion of the trustees or trustee, invest the several moneys to be received by them or him from any such sale or for equality of partition as aforesaid, when and as the same respectively shall be received, in the names or name of the trustees or trustee in some or one of the modes of investment hereinafter authorised, with power from time to time, with such consent or at such discretion as aforesaid, to vary the said investments into or for others of the same or a like nature. The said moneys hereinbefore directed to be invested, and the stocks, funds, and securities for the time being representing the same, are hereinafter called the "husband's trust funds."

2. Trustees  
to receive  
portion of  
wife and  
invest, &c.

2. THE trustees or trustee shall, upon the receipt of the said sum of £—, appointed and assigned by the secondly hereinbefore recited indenture, invest the same in, &c. (*Trust for investment and power to vary investments, as in last article*). The said sum of £—, and the stocks, funds, and securities for the time being representing the same are hereinafter called the "wife's trust funds."

3, 4. (*Trusts and powers as in Precedent No. IX., Articles 3, 4, supra, pp. 226, 227.*)

5. If the said part or share of and in the said freehold and leasehold premises respectively, or any part thereof, shall remain unsold at the decease of the said R. B., the trustees or trustee shall until the sale thereof pay the net rents and profits thereof, or of any hereditaments which may be acquired under any partition as aforesaid, to the person or persons and in the manner to whom and in which the income of the moneys produced by the sale thereof would for the time being be payable or applicable under the foregoing trusts if such sale had been made.

SETTLEMENT  
OF PROCEEDS  
OF SALE OF  
REVERSION  
ARY SHARE  
OF FREE-  
HOLDS AND  
LEASEHOLDS,  
ETC.

5. Trusts  
of rents  
until sale,

6. If the said part or share of and in the said freehold and leasehold premises, or any part thereof, shall be sold in the lifetime of the said R. B., then and in such case the trustees or trustee shall stand possessed of the moneys to arise from such sale, UPON the same trusts and with and subject to the same powers and provisions as are hereinbefore declared and contained concerning the moneys to arise from any sale which may be made after the decease of the said R. B. of the same undivided part or share, save and except that every investment or variation of investment of the said moneys made in the lifetime of the said R. B., shall be with his consent in writing, as well as with the consent in writing of the said A. B. and C. D., or the survivor of them, and that the income of the said moneys, or the investments for the time being representing the same shall be paid to the said R. B. during his life.

6. Declara-  
tion of  
trusts in  
case of a sale  
during life  
of tenant  
for life.

7, 8. (*Clauses as to investments and appointment of new trustees, supra*, pp. 229 to 231.)

9. THESE presents shall be void if the said intended marriage shall not be solemnised within twelve calendar months from the date hereof.

9. Settle-  
ment to be  
void, if  
marriage not  
solemnised  
within  
twelve  
months.

IN WITNESS, &c.



of the residuary real and personal estate of the said X. Y., and the stocks, funds, or securities in or upon which the same, or any part thereof, may be invested or laid out, and the accumulations, if any, of the same: AND ALL THE RIGHT, title, interest, property, claim, and demand whatsoever, of her the said C. D., in and to the said moneys and premises, and every of them, and every part thereof: TO HOLD the said premises hereby assigned, or expressed so to be, unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, IN TRUST for the said C. D., until the said intended marriage, and after the solemnization thereof, upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same.

SETTLEMENT  
OF SHARE OF  
RESIDUARY  
ESTATE.

of appointed  
reversionary  
sum, and  
other  
personal  
estate.  
All the  
estate, &c.  
Habendum  
to trustees,  
upon trusts  
after de-  
clared.

2 to 6. (*Usual trusts and powers in settlement of a wife's fortune as in one of the former Precedents.*)

7. THE trustees or trustee for the time being of these presents may, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of the trustees or trustee, make or concur in any arrangement with the executor or executors, or trustees or trustee for the time being of the said will of the said X. Y., or the residuary legatee or legatees under the said will (other than the said C. D.), or any of them, for or in relation to the distribution and partition of the real and personal estate of the said X. Y., or the proceeds thereof, and may accept and take any part of the said real and personal estate in lieu of and by way of satisfaction for the moiety hereby assigned by the said C. D. of and in the proceeds of the said estate, without insisting upon a sale and conversion of the said real and personal estate and the division of the proceeds thereof in strict accordance with the directions of the said will, and in case any freehold, copyhold, or leasehold hereditaments shall be acquired by the trustees or trustee for the time being of these presents by virtue of any such arrangement as aforesaid, such freehold, copyhold, or leasehold hereditaments shall be held by the said trustees or trustee upon the same trusts and with and subject to the same powers and provisions as are hereinbefore declared and contained concerning any hereditaments to be purchased with the proceeds of the trust premises hereby settled by the said C. D. under the power in that behalf hereinbefore contained, and in case any personal chattels shall be acquired by the said trustees or trustee under

7. Power to  
trustees to  
make ar-  
rangements  
with exe-  
cutors of  
will as to  
the distri-  
bution of the  
testator's  
estate.



SETTLEMENT  
OF SHARE OF  
RESIDUARY  
ESTATE

any such arrangement as aforesaid, the said trustees or trustee may retain the same unconverted for so long as they or he, with such consent or at such discretion as aforesaid, shall think fit, and shall permit the same while remaining unconverted to be enjoyed by the person or persons who would for the time being be entitled to the income of the proceeds of the conversion thereof if such conversion had been made: AND it shall not be incumbent on the said trustees or trustee to see or to inquire into the state and condition of any such personal chattels, or to make or cause to be made any schedules or inventories thereof, or to take any steps whatever for the preservation of the same, unless the said trustees or trustee shall think fit, nor shall they or he be responsible for any loss or injury whatsoever which may happen to or in respect of the same chattels or any of them.

8. Special  
powers to  
trustees  
as to share  
in residuary,  
real, and  
personal  
estate.

8. THE trustees or trustee for the time being of these presents may, with such consent or at such discretion as aforesaid, accept payment of the moiety hereby assigned by the said C. D. of and in the said residuary estate and effects, or any part or parts thereof respectively, either together in an aggregate amount, or by instalments, and may give such time for the payment thereof or the instalments thereof, and upon such terms as to interest, and either with or without requiring any security for the same or otherwise, as the said trustees or trustee may deem fit or expedient, AND also with such consent, or at such discretion as aforesaid, may accept any part or parts of the property representing the moiety of the said C. D. in the estate and effects of the said X. Y., by way of composition for and in satisfaction of the whole of the same, if from any unforeseen circumstances the said trustees or trustee shall deem it necessary or expedient so to do, and on receipt of the whole or any part or parts thereof, whether in full or by way of composition as aforesaid, may give and execute all such releases and discharges as may be reasonably required by the person or persons paying or transferring the same, or, as the said trustees or trustee may think proper to give and execute, and also may pass and allow the accounts of the executor or executors, or trustee or trustees, of the said will of the said X. Y. relating to the estate and effects of the said X. Y., or dispute or disallow the same, and also may institute or defend all such actions, or other proceedings for the recovering of the moiety of the said C. D. of and in the said estate and effects, or

any part thereof, or in relation thereto, as the said trustees or trustee for the time being of these presents shall deem expedient in that behalf, and may prosecute and conduct all such actions, or other proceedings, in such manner in all respects as they or he shall see fit or otherwise, with such consent or at such discretion as aforesaid, may continue or abandon the said, or compromise, compound, and submit to arbitration all such questions, disputes, doubts, or differences as may arise in relation to the premises or any part or parts thereof, and generally with such consent or at such discretion as aforesaid, may do and execute all such other acts, deeds, and things as may be requisite, or as they or he may deem expedient, for the adjustment or settlement of any such questions as aforesaid: AND in case any question shall arise whether any money or other property received by the trustees or trustee for the time being of these presents in respect of the estate and effects of the said X. Y. ought to be treated as *corpus* or income for the purposes of these presents, every or any such question shall be decided by the said trustees or trustee for the time being in such manner as they or he, either under the advice of counsel or otherwise, shall think proper: AND every act, deed, and thing, done or executed by the said trustees or trustee for the time being of these presents, under any of the powers hereinbefore contained (including any decision as to whether any such money or property as aforesaid ought to be treated as *corpus* or income), shall be binding on all the persons beneficially interested under the trusts of these presents.

9. (*Appointment of new trustees clause, supra*, p. 231.)

10. IF the said intended marriage shall not be solemnised within twelve calendar months from the date thereof, then and in such case these presents shall be void, and the premises hereby settled by the said C. D. shall remain her absolute property.

10. Settlement to be void if marriage not within twelve months.

IN WITNESS, &c.

NO. XXII.

SETTLEMENT OF PERSONALTY, with POWER to TRUSTEES to purchase an ADVOWSON, and TRUSTS of same.

OF PERSONALTY WITH POWER TO PURCHASE ADVOWSON.

THIS INDENTURE, made the — day of —, BETWEEN the Rev. A. B. of, &c. (*intended husband*), of the first part, C.

Parties.

OF  
PERSONALTY  
WITH  
POWER TO  
PURCHASE  
ADVOWSON.

Power to  
trustees to  
purchase  
advowson.

Trustees to  
hold advow-  
son when  
purchased  
in trust to  
sell ;

and until  
sale

in trust for  
husband for  
life, and  
after his  
decease  
upon trust  
for persons  
who would  
be entitled  
to income  
of proceeds  
of sale if

D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the third part (*the same as Precedent No. II. or any of the preceding Precedents, down to the end of the ordinary trusts and powers,—Power to invest in the purchase of land*) : PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for the trustees or trustee for the time being of these presents, at any time during the life of the said A. B., upon his request in writing, and with the consent of the said C. D., if she shall be then living, to raise by the sale or conversion into money of a competent part of the trust funds and premises for the time being subject to the trusts of these presents [or the trust funds and premises hereby settled on the part of the said A. B.], any sum of money not exceeding the sum of £—, and to apply the same in the purchase of the advowson or perpetual right of presentation to any ecclesiastical benefice in England or Wales to be conveyed to the said trustees or trustee for the time being, and to be held by them or him upon the trusts following (that is to say), UPON TRUST that the said trustees or trustee for the time being shall, upon the request in writing of the said A. B. and C. D., during their joint lives, or of the survivor of them during his or her life, and from and after the decease of such survivor, then at the discretion of the said trustees or trustee for the time being, sell the same advowson or perpetual right of presentation, or the next one or more presentation or presentations to the same benefice, in the same manner and with the same powers and provisions as they or he are or is hereinbefore empowered to sell the hereditaments and premises to be purchased under the power of purchasing hereditaments hereinbefore contained, and shall stand possessed of the proceeds of such sale or sales, subject to the expenses attending the same. UPON THE SAME TRUSTS and with the same powers and provisions as the money laid out in the purchase of such advowson or perpetual right of presentation would have been subject to if the same had not been so laid out : AND IN THE MEANTIME, and until such sale as aforesaid, and in case of any sale of a next presentation, then subject to such sale, IN TRUST for the said A. B. during his life and after his decease, IN TRUST for the person or persons who, if the said advowson had been sold, would for the time being be entitled under these presents to the income of the trust funds representing the proceeds thereof, and so that during the minority of any person who if of full age would for the time

being be entitled to nominate or join in the nomination to the said benefice under the trusts now being declared, the guardian or guardians of such minor shall have the like right to nominate or join in the nomination as the minor would have had if he or she had been of full age (a): PROVIDED ALWAYS, and it is hereby agreed and declared, that if the trustees or trustee for the time being of these presents shall think fit, it may, with the consent in writing of the said A. B., and of the said C. D., if she shall be then living, be made part of the arrangement on the purchase of such advowson as aforesaid, either that the vendor

OF  
PERSONALTY  
WITH  
POWER TO  
PURCHASE  
ADVOWSON.

advowson  
had been  
sold.

Proviso that  
it may be  
made part  
of arrange-  
ment on  
purchase of  
advowson,  
that vendor  
shall pay  
interest on

(a) In the early editions of this work, the trusts of the advowson in the above Precedent were in the form of a direction to present certain specified or indicated persons so long as it should remain unsold. Trusts of this kind are not uncommon, particularly in wills. Their validity does not appear to have been questioned in any reported case, but it is conceived that if it were so, there would be some difficulty in sustaining them. A right of presentation is a right coupled with a public duty, and it is conceived that any agreement or arrangement by which a patron is prevented, when a vacancy happens, from selecting such clerk as he may conscientiously believe to be the most proper individual for supplying the living, would be held void independently of the statutes against simony, as contrary to public policy. See the judgment of Hullock, B., *Fletcher v. Lord Sondes*, 1 Bligh. N. S. 190. Speaking of a bond of resignation (which was decided to be void), the learned judge says:—"The patron thereby becomes precluded from choosing the most proper individual for supplying the living. If he act in the presentation according to the condition of the bond, his choice is fixed long before the fitness of the object can be ascertained. At the execution of the bond, the nominee may be at college, or perhaps at school, or perhaps in his cradle." Special bonds of resignation are now rendered valid by statute under certain conditions; but the force of the above reasoning is not thereby diminished, and it applies with still greater force, to a trust of the kind above referred to, than to a bond of resignation; because, under the latter, the patron has the option whether to enforce it or not: whereas, under the former, the trustee is absolutely tied to present the particular person. See also, *Potter v. Chapman*, Ambler, 100. In the case of *Webb v. Byng*, 2 K. & J. 669, a testatrix gave to A. the "livings" of Q. and C., should he like the profession, and be qualified for them. Wood, V.-C., held that the devise was confined to a single presentation, and did not extend to the advowson, as the words "should he like," &c., showed an intention to confer on the devisee a personal benefit, which could only be effected by his being himself presented. This case seems to have decided that the testatrix, by the gift of the livings to A. meant that A. should be presented, which intention could only, it is apprehended, be carried into effect by supposing a trust vested in the heir-at-law for that purpose. The question whether such a trust could be enforced, does not seem to have been raised; and it is submitted, therefore, that this case is not an authority against the view expressed in the former part of this note. Having regard to the above observations, it is submitted that when an advowson is made the subject of a settlement, or is authorised to be purchased out of the trust funds, the deed should simply declare who are to be the cestuis que trust of such advowson, i.e., of the right to present, and not who are the persons to be presented. A cestui que trust of the right could nominate himself and the trustee would be bound to present him; all that is necessary being that the beneficial patron, for the time being, should have a free choice.

OF  
PERSONALTY  
WITH  
POWER TO  
PURCHASE  
ADVOWSON.

purchase  
money until  
vacancy, or  
that pur-  
chase money  
shall be in-  
vested until  
vacancy and  
income  
received by  
purchaser.

shall receive the purchase-money upon the completion of the purchase, and pay to the trustees or trustee for the time being of these presents interest thereon, computed from the time of such payment, until a vacancy shall happen in the benefice the advowson whereof shall be so purchased as aforesaid, after such rate not exceeding £5 per cent. per annum, and to be secured in such manner as shall be agreed upon between the parties, or that the purchase-money shall be paid to the vendor upon and not before the happening of such vacancy, and shall in the meantime be invested in the names of trustees to be nominated for that purpose: UPON TRUST to pay the annual income thereof to the trustees or trustee for the time being of these presents until the happening of such vacancy, and from and after such vacancy, IN TRUST for the vendor (*Power to appoint new trustees, supra, p. 231*).

IN WITNESS, &c.

No. XXIII.

OF MONEY  
IN NEW  
ZEALAND.

SETTLEMENT of a sum of Money transmitted to Trustees in NEW ZEALAND for the benefit of the WIDOW and CHILDREN of the Settlor's deceased SON.—*Ample powers of INVESTMENT,—INCOME to be applied for benefit of WIDOW and CHILDREN until youngest Child attains twenty-one, and then ANNUAL SUM to be paid to WIDOW during WIDOWHOOD; and subject thereto, TRUST FUND to go to CHILDREN.—POWER to SETTLOR to REVOKE and DECLARE NEW TRUSTS for benefit of same objects.*

Parties.

Recite  
death of  
settlor's  
son, leaving  
widow and  
children.

That settlor  
has trans-  
mitted  
money to  
trustees.

Witnessing  
part.

Settlor  
directs  
trustees to  
hold money

THIS INDENTURE, made the — day of —, BETWEEN A. B. of — in England, Esq. (*settlor*), of the one part, and C. D. and E. F. both of — in New Zealand, gentlemen (*trustees*), of the other part: WHEREAS G. B. (a son of the said A. B.) lately died in New Zealand, leaving H. B. his widow, and leaving also four children by the said H. B.: AND WHEREAS, the said A. B. has lately transmitted the sum of £—— to the said C. D. and E. F. to the intent that they may stand possessed thereof upon the trusts and with and subject to the powers and provisions hereinafter expressed concerning the same: NOW THIS INDENTURE WITNESSETH, that IT IS HEREBY AGREED AND DECLARED, and in particular the said A. B. in consideration

of his natural love and affection for the objects of the settlement intended to be hereby made doth hereby direct and declare, that the said C. D. and E. F., their executors, administrators and assigns, shall stand possessed of the said sum of £—, UPON the trusts and with and subject to the powers and provisions expressed in the following articles (that is to say),—

OF MONEY  
IN NEW  
ZEALAND.

upon  
following  
trusts,

1. THE said C. D. and E. F., or the survivor of them (hereinafter called "the trustees or trustee"), shall invest the said sum of £— in their or his names or name or under their or his control upon any government real or personal securities whether in the United Kingdom or in New Zealand as the trustees or trustee shall in their or his discretion think fit, and may from time to time vary the said securities for any other securities of the like nature. The said sum of £— and the securities upon which the same shall from time to time be invested are hereinafter called "the trust fund."

1. Trustees  
to invest  
money.

2. THE trustees or trustee shall during the minority of the youngest child for the time being of the said G. B. deceased, apply the whole or such part as they or he shall think fit of the income of the trust fund for or towards the support, maintenance, and benefit of the said H. B. and the children of the said G. B. deceased, or any one or more exclusively of the other or others of them the said H. B. and the said children, in such manner in all respects as the trustees or trustee shall in their or his absolute discretion think fit, and shall accumulate the surplus (if any) of the said income by investing the same and the resulting income thereof in manner aforesaid, to the intent that the accumulations shall be added to the principal trust fund and follow the destination thereof, with liberty nevertheless for the trustees or trustee at any time or times to resort to the accumulations of any preceding year or years, and apply the same for the support, maintenance, and benefit of the said H. B. and the said children or any one or more of them..

2. During  
minority of  
youngest  
child,  
income to  
be applied  
for benefit  
of widow  
and children  
at discretion  
of trustees.

3. IF the said H. B. shall be living and shall not have married again at the time when the youngest child for the time being of the said G. B. deceased attains the age of twenty-one years, the trustees or trustee shall thenceforth out of the income of the trust fund (including the said accumulations if any) pay to the said H. B. the annual sum of £— during her life if she shall so long continue the widow of the said G. B. deceased.

3. When  
youngest  
child attains  
twenty-one,  
annual sum  
to be paid  
to widow  
during  
widowhood.

4. SUBJECT to the annual sum provided by Article 3, if and while the same shall be payable, the trust fund (including the

4. Subject  
to annual  
sum, trust  
fund to go  
to children  
equally.

OF MONEY  
IN NEW  
ZEALAND.

said accumulations (if any) shall when and so soon as the youngest child for the time being of the said G. B. deceased attains the age of twenty-one years, go and be divided among all the children of the said G. B. deceased, who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, in equal shares and so that the share of each such child shall be a vested and transmissible interest in such child being a son upon his attaining the age of twenty-one years, or being a daughter upon her attaining that age or marrying (which shall first happen), notwithstanding that he or she may die before the period of distribution.

5. Power to trustees, with consent of widow, and after her death or second marriage at their discretion to raise money for advancement of children.

5. THE trustees or trustee may at any time or times during the minority of the youngest child for the time being of the said G. B. deceased, with the consent in writing of the said H. B. during her widowhood, and after her second marriage or death (which shall first happen) at the discretion of the trustees or trustee, raise out of the trust fund any sum or sums of money and apply the same for the advancement or benefit of any child of the said G. B. deceased, and any sum or sums of money so applied for the advancement or benefit of any child shall be taken in part satisfaction of the ultimate share of such child in the said trust fund.

6. If no child attains a vested interest, trust fund to revert to settlor.

6. IF no child shall attain a vested interest in the trust fund, the same (including the said accumulations), shall, subject to the trusts and powers hereinbefore declared and contained, revert to and be held in trust for the said A. B., his executors, administrators, and assigns.

7. Power to trustees to purchase any property in the United Kingdom or New Zealand as an investment:

7. THE trustees or trustee may at any time or times at their or his discretion lay out the said trust fund (including the said accumulations) or any part thereof in the purchase of any real or personal property in the United Kingdom or in New Zealand of what nature or kind soever, and the trustees or trustee shall stand possessed of any property to be purchased as aforesaid, upon trust that they or he shall re-sell the same or any part thereof when and as they or he shall think fit, and shall stand possessed of the money to arise from such re-sale, upon the same trusts and with the same powers as are herein declared and contained concerning the said sum of £—— hereby settled, including the aforesaid power of purchasing property, and shall in the meantime and until such re-sale pay and apply the rent or income arising from the property to be purchased as aforesaid to the person or persons and in the manner to whom and in which

the income of the money laid out in the purchase of such property would for the time being be payable under the trusts of these presents if such purchase had not been made.

OF MONEY  
IN NEW  
ZEALAND.

8. THE trustees or trustee may demise or let any land, or other property purchased under the aforesaid power and which shall remain unsold, for such term or terms of years at such rent or rents, and upon such conditions in all respects as they or he may think fit.

8. Trustees  
may let any  
property  
purchased.

9. ANY sale of property hereby authorised to be sold may be made either by public auction or private contract, and subject to any conditions as to title or otherwise, and the trustees or trustee may buy in any property offered for sale by auction, and may vary any contract for sale of any property, and may re-sell the same property without being answerable for any loss arising thereby, and may execute assurances, give effectual receipts for the purchase money, and do all other acts and things for effectuating any such sale which they or he may think proper.

9. Mode of  
effecting  
sales.

10. THE trustees or trustee may compromise or compound any action, suit, proceeding, difference or demand relating to the trust fund or property, or any part thereof, upon any terms which they or he shall think proper, and may refer any such difference or demand to arbitration, and may execute and do all instruments and things expedient for such purposes, or any of them, and in all cases in which any question of law or equity shall arise relating to the said trust fund or property, or any part thereof, may settle and arrange the same in such manner as they or he shall think fit, and may abandon or relinquish any claim and may adjust, settle, and approve all accounts relating to the said trust fund or property, or any part thereof, and may determine whether any money shall for the purposes of these presents be considered income or otherwise, and may execute and do all releases and things relating to the said trust fund or property as fully and absolutely as the trustees or trustee could do if they or he were or was the absolute owners or owner thereof, and without being answerable for any loss which may be occasioned thereby.

10. Power to  
trustees to  
settle  
difference  
and ques-  
tions.

11. If the trustees hereby constituted or either of them or any future trustee or trustees of these presents shall die or desire to retire from or refuse or become incapable to act in the trusts hereof before the same shall be fully satisfied, then, and in every such case, it shall be lawful for the said A. B. during his life, and after his decease for the surviving or continuing

11. Power to  
appoint new  
trustees.



OF MONEY  
IN NEW  
ZEALAND.

trustee or trustees for the time being of these presents, or if there shall be no surviving or continuing trustee, then for the executors or administrators, executor or administrator, of the last surviving trustee, or for the refusing or retiring trustee or trustees, to appoint one or more person or persons to be a trustee or trustees in the place of the trustee or trustees so dying or desiring to retire or refusing or becoming incapable to act as aforesaid, and every such new trustee shall have all the powers and authorities of the trustee in whose place he shall be substituted.

12. Trustees' indemnity clause.

12. THE trustees or trustee shall not be answerable the one for the other of them nor for the insufficiency of any security which they or he may acquire under the trusts or powers of these presents, nor for any other involuntary loss, and they may reimburse themselves out of the trust premises all costs and expenses incurred in or about the execution of the trusts of these presents.

13. Power to settlor to revoke and declare new trusts,

13. THE said A. B. may at any time during his life by any deed or deeds with or without power of revocation and new appointment revoke either wholly or partially the trusts and powers hereby declared concerning the trust fund hereby settled, or the moneys or property for the time being representing the same, and by the same or any other deed or deeds may appoint and declare any new or other trusts or powers concerning the trust premises to which such revocation shall extend as to him shall seem meet: but so that such new or other trusts or powers shall be for the benefit of the said H. B. and the children and remoter issue of the said G. B. deceased, or some or one of them.

In favour of the widow or issue of deceased son of settlor.

IN WITNESS, &c.

#### No. XXIV.

MONEY IN  
NEW  
ZEALAND.

DEED partially revoking the Trusts of the last Precedent, and declaring new Trusts.—APPOINTMENT of TRUSTEES in ENGLAND in addition to NEW ZEALAND TRUSTEES.—The NEW ZEALAND TRUSTEES to manage the TRUST PROPERTY in the Colony, and to transmit the Income to ENGLAND, and the ENGLISH TRUSTEES to apply the Income so received.

Recite settlement.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of — in England, Esq., sends greeting: WHEREAS by

an indenture dated the — day of —, and made between the said A. B. of the one part, and C. D. and E. F., both of — in New Zealand, gentlemen, of the other part; the said A. B. directed that the said C. D. and E. F., their executors, administrators and assigns should stand possessed of the sum of £—— therein mentioned to have been transmitted to them by the said A. B. upon the trusts therein declared for the benefit of H. B. the widow of G. B. deceased (one of the sons of the said A. B.), and the children of the said G. B. deceased; and by the said indenture it was declared that it should be lawful for the said A. B. during his life by any deed or deeds, with or without power of revocation and new appointment, to revoke either wholly or partially the trusts and powers thereby declared concerning the trust fund thereby settled, or the moneys or property for the time being representing the same, and by the same or any other deed or deeds to appoint and declare any new or other trusts or powers concerning the trust premises to which such revocation should extend as to him should seem meet, but so that such new or other trusts or powers should be for the benefit of the said H. B., and the children and remoter issue of the said G. B. deceased, or some or one of them: AND WHEREAS the said H. B. and her family having returned to England, the said A. B. is desirous of altering the provisions of the hereinbefore recited indenture in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS that the said A. B. in exercise of the power in this behalf so as aforesaid contained in the said indenture, and of all other powers (if any) in anywise enabling him in this behalf, Doth hereby revoke the trusts and provisions declared by and contained in the said indenture so far as is necessary to give effect to the new appointment intended to be hereby made: AND doth hereby appoint as follows (that is to say):—

MONEY IN  
NEW  
ZEALAND.

That son's  
family have  
returned to  
England.

Witnessing  
part.

Settlor  
partially  
revokes  
trusts of  
settlement,  
and ap-  
points as  
follows:

1. The said C. D. and E. F. are hereby confirmed as the trustees in New Zealand for the purposes of the hereinbefore recited indenture and these presents, and they and the survivor of them are hereinafter called "the New Zealand trustees or trustee." The powers of investment in New Zealand securities, and of purchasing, selling, leasing and managing property in New Zealand by the said indenture conferred upon the New Zealand trustees or trustee are hereby also confirmed.

1. Con-  
firmation of  
New Zea-  
land trus-  
tees and  
their powers  
of invest-  
ment and  
managing  
property in  
New  
Zealand.

2. I. K. of, &c., and L. M. of, &c., are hereby appointed the trustees in England for the purposes of the hereinbefore recited

2. Appoint-  
ment of  
trustees in  
England.

**MONEY IN  
NEW  
ZEALAND.**

3. Income to be transmitted to English trustees.

4. English trustees to apply income for support of family during minority of youngest child.

5. After youngest child attains twenty-one, annuity to be paid to widow during widowhood.

6. Subject to annuity, trust funds to go to sons attaining twenty-one, and daughters attaining twenty-one, or marrying.

indenture and these presents, and they and the survivor of them are hereinafter called "the English trustees or trustee."

3. THE New Zealand trustees or trustee shall during the continuance of the trusts of these presents transmit all the income to arise from the trust funds and property for the time being subject to the hereinbefore recited indenture (hereinafter called "the trust premises") to the English trustees or trustee, whose receipt shall be a sufficient discharge for the same.

4. THE English trustees or trustee shall during the minority of the youngest child for the time being of the said G. B. deceased, apply the whole or such part, as they or he shall think fit, of the income received by them or him under Article 3, for or towards the support, maintenance, and benefit of the said H. B. and the children of the said G. B. deceased, or any one or more of them the said H. B. and the said children exclusively of the other or others of them in such manner in all respects as the English trustees or trustee shall in their or his absolute discretion think fit, and shall accumulate the surplus (if any) of the said income by investing the same, and the resulting income thereof, with liberty nevertheless for the same trustees or trustee at any time or times to resort to the accumulations of any preceding year or years, and apply the same for the support, maintenance, and benefit of the said H. B. and the said children or any one or more of them.

5. IF the said H. B. shall be living and shall not have married again at the time when the youngest child for the time being of the said G. B. deceased attains the age of twenty-one years, the English trustees or trustee shall thenceforth out of the income of the trust premises (including the accumulations created under Article 4), pay the annual sum of £—— to the said H. B. during her life, if she shall so long continue the widow of the said G. B. deceased.

6. SUBJECT to the annual sum provided by Article 5, if and while the same shall be payable, the trust premises (including the said accumulations if any) shall go to and be divided among all the children of the said G. B. deceased, who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, in equal shares, and so that the share of each such child shall be a vested and transmissible interest in such child, being a son, upon his attaining the age of twenty-one years, or, being a daughter, upon her attaining that age or marrying (which shall first happen), notwithstanding that

he or she may subsequently die before the period of distribution.

MONEY IN  
NEW  
ZEALAND.

7. THE English trustees or trustee may at any time or times during the minority of the youngest child for the time being of the said G. B. deceased, with the consent in writing of the said H. B., if she shall continue a widow, and after her second marriage or death (which shall first happen), at the sole discretion of the same trustees or trustee raise out of the said trust premises and accumulations for the time being any sum or sums of money, and apply the same for the advancement or benefit of any child of the said G. B. deceased, and any sum or sums of money so applied for the advancement or benefit of any child shall be taken in part satisfaction of the ultimate share of such child in the said trust premises and accumulations.

7. Power  
advance  
children.

8. ANY income or other money hereby directed or authorized to be invested by the English trustees or trustee may be invested by them or him in or upon any of the public stock or funds or government securities of the United Kingdom, or any stocks or securities of the Indian Government, or in bank stock or on real or leasehold securities in any part of the United Kingdom, or the debentures or stock or shares of any railway or other company in the United Kingdom or in India, and the English trustees or trustee may from time to time vary the said investments into or for others of the same or a like nature at their or his discretion: PROVIDED ALWAYS, that the English trustees or trustee, may if they or he think fit transmit any such income or other money as aforesaid to the New Zealand trustees or trustee, or may permit the last-mentioned trustees or trustee to retain the same instead of transmitting it to England as directed by Article 3, To the intent that the New Zealand trustees or trustee may invest the income or other money so transmitted to or retained by them or him as aforesaid in their or his names or name in or upon any such securities or in the purchase of any such property as the principal trust premises are by the hereinbefore recited indenture authorized to be invested in or upon, and the receipts of the New Zealand trustees or trustee for any money transmitted to them or him as aforesaid shall be sufficient discharges for the same.

8. How  
income not  
applied is to  
be invested.

9. THE New Zealand trustees or trustee may, if they or he shall think fit, transmit the principal trust premises or any part thereof to the English trustees or trustee to be invested in the names or name of the last-mentioned trustees or trustee in or

9. New  
Zealand  
trustees  
may  
transmit  
principal  
money to  
England for

MONEY IN  
NEW  
ZEALAND.

investment,  
and shall  
do so, if  
required by  
English  
trustees.

upon any such stocks, funds, shares, or securities as are mentioned in Article 8: AND the English trustees or trustee may, if they or he think fit, direct the New Zealand trustees or trustee to transmit to them or him the principal trust premises or any part thereof to be invested in manner last aforesaid, and in such case the New Zealand trustees or trustee are hereby required to comply with such direction.

10. Power  
for ap-  
pointment  
of new  
trustees.

10. IF any of the present or future trustees (whether New Zealand or English trustees) shall die or desire to be discharged, or refuse or become incapable to act in the trusts aforesaid, the said A. B. during his life, and after his death the English trustees or trustee for the time being continuing to act in the said trusts, or if there shall be no continuing English trustee then the last retiring English trustee or the executors or administrators of the last acting English trustee may appoint a trustee in the place of the trustee so dying, desiring to be discharged, or refusing or becoming incapable to act as aforesaid: AND every new trustee (whether New Zealand or English) appointed under this power shall have all the powers of the trustee in whose place he shall be substituted.

11. Power  
to settlor to  
revoke  
trusts.

11. THE said A. B. during his life may, by any deed or deeds, revoke all or any of the trusts, powers, and provisions declared and contained by and in the hereinbefore recited indenture and these presents concerning the said trust premises and accumulations, or any part thereof, and may by the same or any other deed or deeds appoint and declare any new or other trusts, powers, and provisions concerning the premises to which such revocation shall extend, so that such new appointment shall be made in accordance with the power in that behalf contained in the hereinbefore recited indenture.

IN WITNESS, &c.

## No. XXV.

SETTLEMENT of *wife's* FREEHOLD and LEASEHOLD OF WIFE'S PROPERTY WITHOUT TRUSTS FOR CHILDREN.  
*property and other* PERSONAL ESTATE *upon* TRUSTS  
*for the benefit of* HERSELF and her APPOINTEES, *ex-*  
*clusive of the husband but* WITHOUT any TRUSTS *for*  
 CHILDREN.

THIS INDENTURE made the — day of —, between C. Parties.  
 D. of &c. (*intended wife*) of the first part, A. B. of &c. (*in-*  
*tended husband*) of the second part, and E. F. of &c., G. H. of  
 &c., and I. K. of &c. (*trustees*) of the third part. (*Recite agree-* Recital of  
*ment for marriage.*) AND WHEREAS the said C. D. is seised in  
 fee simple of the freehold hereditaments described in the first  
 schedule hereto, and she is possessed of the leasehold heredita-  
 ments described in the second schedule hereto for the residue  
 of the terms of years subsisting therein respectively, and she is  
 also possessed of or entitled to the stocks, funds, and securities  
 specified in the third schedule hereto: AND WHEREAS upon the  
 treaty for the said intended marriage it was agreed that such Agreement for settle-  
 settlement should be made as is hereinafter expressed, and with a  
 view to the said intended settlement the stocks, funds, and  
 securities specified in the third schedule hereto have been trans-  
 ferred into the names of or otherwise made to vest in the parties  
 hereto of the third part before the execution of these presents:

NOW THIS INDENTURE made in consideration of the said Witnessing part  
 intended marriage WITNESSETH and declares as follows:

1. The said C. D. with the consent of the said A. B. (testified 1. Grant of freeholds.  
 by his executing these presents) doth hereby grant unto the  
 said parties hereto of the third part and their heirs, ALL  
 those freehold hereditaments described in the first schedule to  
 these presents (*General words. And all the estate, etc.*) To  
 HAVE and TO HOLD the hereditaments and premises hereby  
 granted or expressed to be unto the said parties hereto of the  
 third part and their heirs, To THE USE of the said C. D. and  
 her heirs until the said intended marriage, and after the  
 said marriage, To THE USE of the said parties hereto of the  
 third part, their executors, and administrators during the joint  
 lives of the said A. B. and C. D., In trust to pay the rents and  
 profits of the said premises to the said C. D. for her sole and To use of trustees during joint lives of husband and wife.  
In trust for separate use of wife without power of anticipation.

OF WIFE'S  
PROPERTY  
WITHOUT  
TRUSTS FOR  
CHILDREN.

Remainder  
to such uses  
as wife shall  
by will while  
covert or by  
deed or will  
while sole  
appoint  
and in  
default of  
appoint-  
ment to use  
of wife in  
fee simple.  
2. Assign-  
ment by  
wife of  
leaseholds.

To trustees.

In trust for  
separate use  
of wife with-  
out power  
of anticipa-  
tion.

Remainder  
as wife shall  
by will while  
covert and  
by deed or  
will while  
sole appoint.

In default  
of appoint-  
ment for

separate use and so that she shall not have power while under coverture to dispose thereof in the way of anticipation; AND after the decease of such one of them the said A. B. and C. D. as shall first die, To such uses and in such manner as the said C. D. shall during coverture by her will or when not under coverture by any deed or deeds or by her will appoint, and in default of and until such appointment and so far as any such appointment shall not extend, To THE USE of the said C. D., her heirs and assigns for ever.

2. The said C. D. with such consent as aforesaid doth hereby assign unto the parties hereto of the third part, their executors, administrators and assigns, THE leasehold hereditaments described in the second schedule hereto, with their and every of their rights, members and appurtenances, AND all the estate, right, title, interest, claim and demand whatsoever of her the said C. D. in and to the said premises: TO HAVE and TO HOLD the leasehold premises hereby assigned or expressed so to be unto the said parties hereto of the third part, their executors, administrators, and assigns for all the residue now unexpired of the several terms of years subsisting therein respectively under the several leases mentioned and referred to in the said second schedule, subject nevertheless to the rents reserved by the said leases respectively and to the covenants and conditions in the said leases respectively contained, and on the lessees' part to be observed and performed; Nevertheless IN TRUST for the said C. D. her executors, administrators and assigns, until the said intended marriage, AND after the solemnization thereof, In trust with and out of the rents and profits of the said premises to pay the rents and observe and perform the covenants by and in the said leases reserved and contained, and on the lessees' part to be paid, observed, and performed and subject thereto, IN TRUST to pay the rents and profits of the said premises to the said C. D. during her life, but so that during the said intended coverture the same shall be for her sole and separate use and she not have power to dispose thereof in the way of anticipation, AND after her decease, IN TRUST for such person or persons and in such manner as the said C. D. during her coverture, by her will, or when under coverture by any deed or deeds, or by her will shall appoint, and in default of and until such appointment and so far as any such appointment shall not extend, IN TRUST for the person or persons who under the statutes for the distribution of the

effects of intestates would have been entitled thereto at her death if she had died possessed thereof intestate and without having been married, such persons if more than one to take as tenants in common in the shares in which the same would have been divisible between them under the said statutes.

OF WIFE'S  
PROPERTY  
WITHOUT  
TRUSTS FOR  
CHILDREN.

next of kin  
of wife.

3. THE parties hereto of the third part, and the survivors and survivor of them, and the executors or administrators of such survivor or other the trustees or trustee for the time being of these presents, shall stand possessed of the stocks, funds, and securities specified in the third schedule to these presents, IN trust for the said C. D., until the said intended marriage shall be solemnised, AND after the solemnisation thereof shall either retain the same or with the consent in writing of the said C. D. during her life, and after her death at the discretion of the said trustees or trustee for the time being, sell, call in, and convert into money the same, and invest the moneys to arise thereby in some or one of the modes of investment hereinafter authorised, with power with such consent, or at such discretion as aforesaid, to vary such investments from time to time into or for others of the same or a like nature, And shall stand possessed of the said stocks, funds, and securities, and the investments for the time being representing the same, IN TRUST to pay the income thereof to the said C. D. during her life, and so that, &c. (*similar trusts to those of leaseholds in Article 2*).

3. Declara-  
tion of trust  
of other  
personal  
estate

upon simi-  
lar trusts to  
the lease-  
hold.

4. It shall be lawful for the trustees or trustee for the time being of these presents, at any time or times during the joint lives of the said A. B. and C. D., at the request of the said C. D., to demise the freehold and leasehold hereditaments and premises hereby granted and assigned respectively, or any part thereof, for any term or terms of years, upon and subject to such rents, covenants, and conditions, as the said trustees or trustee shall think fit: AND ALSO at the like request to sell the said freehold and leasehold hereditaments and premises, or any part thereof upon such conditions, and in such manner as the said trustees or trustee shall think fit: AND upon every or any such sale, the moneys to arise therefrom (after paying thereout the costs and expenses), shall be held by the said trustees or trustee upon the same trusts, and with and subject to the same powers and provisions as are hereinbefore declared and contained of and concerning the moneys to arise from the sale, calling in, and conversion of the stocks, funds, and securities, specified in the third schedule hereto.

4. Powers to  
lease

and sell.



OF WIFE'S  
PROPERTY  
WITHOUT  
TRUSTS FOR  
CHILDREN.

5. Agree-  
ment for  
selling other  
and after  
acquired  
property.

5. IT IS AGREED that all real and personal estate not hereinbefore settled of or to which the said C. D. at the time of the said intended marriage, or she or the said A. B. in her right during the now intended coverture, shall be or become entitled for any estate or interest whether in possession, reversion, or otherwise (except jewels, trinkets, ornaments of the person, plate, linen, china, furniture, pictures, prints, books, and articles of the like nature, and except also any legacy or other property acquired at one and the same time not exceeding in amount or value £500, all which excepted premises it is hereby declared shall belong to the said C. D. for her sole and separate use), shall, as soon as circumstances will admit, and at the cost of the trust estate, be conveyed and transferred unto or otherwise vested in the trustees or trustee for the time being of these presents, as to such part of the premises as shall consist of freehold hereditaments to the same uses upon the same trusts, and with and subject to the same powers and provisions as are hereinbefore declared and contained of and concerning the freehold hereditaments described in the first schedule hereto: AND as to such part of the premises as shall consist of leasehold or other personal property upon the same trusts, and with and subject to the same powers and provisions as are hereinbefore declared and contained of and concerning the leasehold premises and personal estate comprised in the second and third Schedules hereto respectively: PROVIDED ALWAYS, that, &c. (*Proviso as to any part of the property which may consist of an annuity, supra, p. 228*).

6. (*Investment clause and power to appoint new trustees, supra, pp. 229, 231*).

IN WITNESS, &c.

The FIRST SCHEDULE above referred to (*to comprise the freehold property*).

The SECOND SCHEDULE above referred to (*to comprise the leasehold property*).

The THIRD SCHEDULE above referred to (*to comprise the stocks and securities and other personal estate*).

## No. XXVI.

SETTLEMENT of FURNITURE *belonging to the WIFE* (a) OR FURNITURE.  
*for her separate use—(b) upon TRUSTS as WIFE* —  
*shall APPOINT, and in DEFAULT of APPOINTMENT, for*  
*WIFE for LIFE for SEPARATE USE, and then for her*  
*CHILDREN, and if no child, for her NEXT OF KIN :*  
*POWER OF SALE (c), UPON TRUST for WIFE for life*  
*for SEPARATE USE, then for HUSBAND for life, and*  
*then for CHILDREN as WIFE shall APPOINT, and in*  
*default of appointment equally, and if NO CHILD*  
*for APPOINTEES or NEXT OF KIN of WIFE. POWER*  
*OF SALE.*

THIS INDENTURE, made the — day of —, BETWEEN Parties.

C. D. of, &c. (*intended wife*), of the first part, A. B. of, &c

(*intended husband*), of the second part, and E. F. of, &c., and

G. H. of, &c. (*trustees*), of the third part, WITNESSETH that

in consideration of a marriage intended shortly to be solemnised between the said A. B. and the said C. D., the said A. B.

doth hereby assign unto the said E. F. and G. H., their executors, administrators, and assigns, all the furniture, chattels, and

effects in and about the messuage or dwelling house, No. 1, —

Street in the Town of — which are mentioned and specified in

the Schedule hereunder written : To HOLD the same unto the

said E. F. and G. H., their executors, administrators, and assigns

IN TRUST for the said C. D., her executors, administrators, and

assigns, for her sole and separate use. IN WITNESS, &c.

Intended wife assigns furniture to trustee.

For separate use of wife.

(or)

IN TRUST for such person or persons, and in such manner as the said C. D. shall, notwithstanding her intended coverture

by any writing under her hand or by her will appoint : AND

in default of, and until such appointment, and so far as any

such appointment shall not extend : IN TRUST to permit the

said C. D. to use and enjoy the said premises during her life

for her sole and separate use : AND after her decease, IN

TRUST for her child or children who shall attain the age of

twenty-one years, and if more than one in equal shares : AND

if there shall be no such child then, IN TRUST for the person

or persons who under the statutes for the distribution of the

In trust for appointees of wife

and in default of and until appointment for wife for her separate use and then for her children and next of kin.

OF  
FURNITURE.

Power to  
trustees to  
sell.

Proviso for  
indemnity  
of trustees.

effects of intestates, would have been entitled thereto at her death if she had died possessed thereof intestate, and without having been married, such persons, if more than one, to take as tenants in common in the shares in which the same would have been divisible between them under the said statutes: PROVIDED ALWAYS that the said E. F., and G. H., or the survivor of them or the executors or administrators of such survivor, may at any time, with the consent of the said C. D. during her life, and after her death, at their or his own discretion, sell the said premises hereby assigned or any of them, and in case of any such sale, shall invest the net proceeds in some or one of the stocks, funds, or securities authorised by law as investments for trust funds, with power with such consent, or at such discretion as aforesaid, to vary the said investments into or for others of the same or a like nature: AND shall stand possessed of the said proceeds and the investments thereof upon the same or the like trusts, and with and subject to the same or the like powers and provisions as are hereinbefore declared and contained of and concerning the said premises hereby assigned or such of them as shall be then subsisting and capable of taking effect: PROVIDED ALSO that while the said premises hereby assigned or any of them shall remain in the possession of the said C. D., the trustees or trustee for the time being shall not be obliged to see to the preservation thereof, nor be answerable for any loss or injury which may happen thereto: AND IT IS DECLARED that the statutory power of appointing new trustees shall be vested in the said C. D. during her life. IN WITNESS, &c.

(or)

Trust for  
wife for  
separate use  
for life and  
then for  
husband for  
life and then  
for children  
of wife,  
as she shall  
appoint, and  
in default of  
appoint-  
ment,  
equally.

IN TRUST to permit the said C. D. to use and enjoy the same during her life for her sole and separate use, and after her decease, [IN TRUST to permit the said A. B., if he shall survive her, to use and enjoy the same during his life, and after the death of the survivor of them the said A. B. and C. D.,] IN TRUST for such child or children of the said C. D., and in such manner as the said C. D. shall by deed or will appoint: AND IN DEFAULT of such appointment and so far as any such appointment shall not extend: IN TRUST for all the children of the said C. D. who shall attain the age of twenty-one years to be divided between them fairly and equally as they shall agree, and if they shall be unable to agree then as the trustees or trustee shall determine: AND if there shall be no child of the said C. D. who shall attain the age of twenty-one years,

If no child  
for ap-  
pointees by

IN TRUST for such person or persons as the said C. D. shall by will, notwithstanding her coverture, appoint, and in default of such appointment and so far as any such appointment shall not extend: IN TRUST for the said C. D., her executors, administrators, and assigns, if she shall survive her now intended coverture: BUT if she shall die during her coverture, IN TRUST for, &c. (*next-of-kin, supra*, p. 291.) PROVIDED ALWAYS that the trustees or trustee for the time being of these presents, may at any time with the consent of the said C. D. during her life and after her decease [with the consent of the said A. B., during his life and after the decease of the survivor of the said A. B. and C. D.] at the discretion of the said trustees or trustee, sell the said premises hereby assigned or any of them, and either apply the net proceeds in purchasing other furniture, chattels, or effects, or invest the same in, &c. (*as in last form*), and shall stand possessed of the proceeds and the furniture, stocks, funds, or securities which shall or may be acquired therewith, UPON the same or the like trusts, and with and subject to the same or the like powers and provisions as are hereinbefore declared and contained of and concerning the premises hereby assigned, or such of them as shall be then subsisting, and capable of taking effect. (*Proviso for indemnity of trustees and appointment of new trustees clause, supra*, p. 292.)

OF  
FURNITURE.  
will of wife  
and in  
default of  
appoint-  
ment for  
wife or her  
next of kin.  
Power  
sale.

IN WITNESS, &c.

No. XXVII.

SETTLEMENT of FURNITURE, &c., by a FATHER on his DAUGHTER-IN-LAW and her CHILDREN—the FURNITURE having been formerly the property of the SON, and purchased from him by the FATHER, and being in the SON'S HOUSE; The SON covenants to bring into SETTLEMENT any other FURNITURE which may be brought by him into the house—the object being to protect the FURNITURE from the claims of the SON'S CREDITORS.

OF  
FURNITURE

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*the settlor*), of the first part, C. B. of, &c. (*settlor's son*), of the second part, and E. F., of, &c., and G. H., of, &c. (*trustees*), of the third part: WHEREAS the said A. B. is desirous

Parties.

Recital of  
agreement  
to settle.

OF  
FURNITURE.

Witnessing  
part.

1. Father  
assigns  
furniture,  
&c.,

to trustees.

2. Trust to  
sell,

and invest  
proceeds ;

and hold  
same

in trust for  
such persons  
as daughter-in-  
law with  
consent of  
trustees  
shall ap-  
point and  
subject  
thereto,

to pay  
income to  
daughter-in-  
law for her  
separate use  
without  
power to  
anticipate,

and hath agreed to settle the furniture, chattels, and effects hereinafter mentioned (being his absolute property) in the manner hereinafter expressed ; and in consideration thereof the said C. B. hath agreed to enter into such covenants as are hereinafter on his part contained: NOW THIS INDENTURE WITNESSETH, as follows :—

1. IN consideration of the covenants hereinafter contained on the part of the said C. B., and for divers other good causes and considerations, the said A. B. doth hereby assign unto the said E. F. and G. H., their executors, administrators, and assigns, THE FURNITURE, chattels, and effects in or about the messuage or tenement, being No. 1, ——— Street, in the town of ——— (the residence of the said C. B.), which are specified in the schedule hereunder written, AND ALL the interest of the said A. B. therein ; TO HOLD the same unto the said E. F. and G. H., their executors, administrators, and assigns, UPON the trusts and with and subject to the powers and provisions hereinafter declared and contained.

2. THE said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called “the trustees or trustee”) shall sell the said furniture, chattels, and effects, either by public auction or private contract, at such time or times, and in such manner as the trustees or trustee shall think fit, and shall invest the moneys to be produced by such sale, in their or his names or name, in or upon any of the public stocks or funds, or government securities of the United Kingdom, or upon real securities in England or Wales (but not in Ireland), and in no other mode of investment, with power to vary the said investments into or for others of the same or a like nature, at their or his discretion, and shall stand possessed of the said trust moneys, stocks, funds, and securities, IN TRUST for such person or persons, and in such manner as D. B. (the wife of the said C. B.) shall by any writing or writings, with the consent of the trustees or trustee (such consent to be also testified in writing), from time to time, or at any time appoint ; and in default of any such appointment, and subject to any partial appointment, shall pay the income of the said trust moneys, stocks, funds, and securities to the said D. B. during her life, for her sole and separate use, free from the control of the said C. B., but so that she shall not have power to dispose thereof in the way of anticipation : AND AFTER her death shall

stand possessed of the said trust moneys, stocks, funds, and securities, IN TRUST for all or any one or more of the children of the said C. B. and D. B., his wife, in such shares and manner as the said D. B. shall by deed or will appoint: AND IN DEFAULT of any such appointment, and subject to any such appointment, IN TRUST for all the children of the said C. B. and D. B., his wife, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares if more than one, and if there shall be only one such child, the whole to be in trust for that one child, BUT so that no child taking a share under any such appointment as aforesaid shall take any share of the unappointed part of the said trust premises without bringing his or her appointed share into hotchpot: AND so also that the trustees or trustee may at any time during the life of the said D. B., with her consent in writing, and after her decease at the discretion of the trustees or trustee, raise the whole or any part of the vested or presumptive share of any child and apply the same for his or her preferment, advancement, or benefit as the trustees or trustee shall think fit.

OF  
FURNITURE.  
and after  
her death  
in trust for  
children as  
she shall  
appoint;  
and in  
default of  
appoint-  
ment,  
equally,  
sons at  
twenty-one,  
and  
daughters at  
twenty-  
one or  
marriage.  
Hotchpot  
clause.

Power of  
advance-  
ment.

3. IF there shall be no child of the said C. B. and D. B., his wife, who shall become absolutely entitled to the said trust premises under the trusts hereinbefore declared, or under any such appointment as aforesaid, then, and in such case, and subject to the trusts, powers, and provisions hereinbefore declared and contained, the trustees or trustee shall stand possessed of the said trust premises, IN TRUST for the said A. B., his executors, administrators, and assigns absolutely.

3. Ultimate  
trust for  
settlor.

4. NOTWITHSTANDING the foregoing trust for sale the trustees or trustee shall not sell the said furniture, chattels, and effects, or any of them, so long as the said D. B. shall be living and shall be able and willing to retain the actual possession and personal enjoyment of the same without her consent in writing, and in the meantime the trustees or trustee shall stand possessed of the said furniture, chattels, and effects, or such of them as shall for the time being remain unsold, IN TRUST for such person or persons, and in such manner as the said D. B. shall by any writing or writings, with the consent of the trustees and trustee (such consent to be also testified by writing), from time to time or at any time appoint, and in default of any such appointment, and subject to any partial appointment, shall permit the same to be used and enjoyed by the said D. B. during her life, for her

4. Proviso  
that no sale  
shall be  
made with-  
out  
daughter-  
in law's  
consent  
while she is  
able and  
willing to  
retain pos-  
session of  
furniture;  
trusts of  
furniture  
until sold.

OF  
FURNITURE.

sole and separate use, free from the control of the said C. B., but so that she shall not have power to assign, charge, or otherwise dispose of the same.

5. Covenant by son to permit furniture, &c., to be enjoyed according to deed.

5. IN consideration of the assignment hereinbefore made by the said A. B., and for divers other good causes and considerations, the said C. B. doth hereby covenant with the said E. F. and G. H., their executors and administrators, that he the said C. B. will at all times permit the said furniture, chattels, and effects to be disposed of, used, and enjoyed under and according to the trusts and provisions of these presents, and will not at any time do, or knowingly suffer any act or thing whereby the use and enjoyment of the same, or any of them in manner aforesaid, shall or may be prevented or interfered with: AND ALSO that if at any time or times hereafter, while any furniture, chattels, or effects subject to the trusts of these presents shall remain unsold, any furniture, linen, plate, china, or articles of domestic use or ornament belonging to the said C. B., shall be brought into the said messuage or tenement in — aforesaid, or any other messuage or tenement in or to which the furniture, chattels, and effects then remaining subject to the trusts of these presents or any of them, shall for the time being be or belong, and be used in the same messuage or tenement with the last-mentioned furniture, chattels, and effects, or any of them, then and so often as the same shall happen, the furniture, chattels, and effects so brought into any such messuage or tenement, and used as aforesaid shall be deemed to be vested in, and shall thenceforth become the property of the trustees or trustee upon the same trusts as are hereinbefore declared concerning the furniture, chattels, and effects hereby assigned or expressed so to be.

And that any additional or substituted furniture, &c., shall be subject to settlement.

6. Proviso to relieve trustees from responsibility.

6. PROVIDED ALWAYS that it shall not be incumbent on the trustees or trustee at any time to sue or take any proceedings against the said C. B. for or on account of any breach of the covenant hereinbefore on his part contained, nor shall it be incumbent on the trustees or trustee at any time to sue or take any proceedings against any person or persons whomsoever for the purpose of recovering any furniture, chattels, or effects which may have been sold, disposed of, or otherwise dealt with contrary to the trusts and provisions herein contained, or for recovering any damages in respect thereof, nor shall it be incumbent on the trustees or trustee at any time to see or to inquire into the state and condition of the furniture, chattels, and effects

for the time being subject to these presents, or to make, or cause to be made, any schedules or inventories of the same, or to take any steps whatever for the preservation of the same, or in relation thereto, unless the trustees or trustee shall think fit so to do, it being the wish and intention of the said A. B. that the trustees or trustee shall have power to do, or cause to be done, all or any of the matters and things aforesaid, but that they or he shall not be deemed to commit a breach of trust, or incur any liability whatsoever, by neglecting or omitting so to do.

7. THE trustees or trustee shall have full power from time to time to determine, refer to arbitration, compromise, or otherwise adjust or settle any dispute or question which may hereafter arise as to what furniture, chattels, and effects are or ought to be for the time being subject to the trusts of these presents, according to the true intent and meaning hereof, and every or any other dispute which may hereafter arise touching or relating to the same, and so as to be absolutely binding on the several persons beneficially interested under these presents, and the trustees or trustee shall not be answerable to any of the persons beneficially interested as aforesaid for the manner in which they or he shall exercise this present power.

OF  
FURNITURE.

7. Power of  
trustees to  
settle  
questions.

IN WITNESS, &c.



SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

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## No. XXVIII.

SETTLEMENT of REAL ESTATE, *with usual PROVISIONS*; CONVEYANCE *by the intended HUSBAND of lands and hereditaments to TRUSTEES for ninety-nine years to secure PIN-MONEY for WIFE during joint lives of herself and her husband, and subject thereto to the use of HUSBAND for life, with REMAINDER to the use that WIFE may receive a JOINTURE RENT-CHARGE during her life, subject as aforesaid to TRUSTEES for one thousand years to secure JOINTURE and raise PORTIONS for younger CHILDREN, subject as aforesaid the LANDS and HEREDITAMENTS are limited to the use of the first and other SONS of the marriage successively in TAIL-MALE; Trusts of the PIN-MONEY TERM; Trusts of the TERM to secure JOINTURE and PORTIONS for younger CHILDREN; POWER to HUSBAND to charge the ESTATE with JOINTURE and PORTIONS in favour of a future WIFE and of CHILDREN by a future marriage; POWERS of MANAGEMENT during minority of TENANTS IN TAIL; LEASING; SALE and EXCHANGE; ENFRANCHISING COPYHOLDS; and making PARTITIONS; and other USUAL PROVISIONS.*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., G. H. of &c., and I. K. of, &c. (*trustees*) (a), of the third part, WITNESSETH and DECLARES as follows :—

The old practice was to have several sets of trustees,—one set is now sufficient.

(a) It was formerly the practice in settlements of real estate to have at least two sets of trustees, viz. :—(1) Trustees of the powers of sale and exchange, and for the general purposes of the settlement, and (2) trustees of the jointure and portions term, and if more than one term was created, separate trustees were frequently appointed for each term. The reason for the practice was founded on the law of merger. Before the Act 8 & 9 Vic. c. 106, it was in most cases necessary and proper to limit freehold estates to trustees, in order to preserve contingent remainders, and if any term of years created by the settlement had been limited to the same trustees, there was a risk of the term merging in the other estate thus created; hence it

1. IN consideration of a marriage intended shortly to be solemnised between the said A. B. and the said C. D., the said A. B. doth hereby grant unto the said E. F., G. H., and I. K., and their heirs, THE manor or reputed manor, messuages, lands, tenements, and hereditaments, situate in the parishes of — and —, in the county of —, which are particularly described in the schedule hereunder written, TOGETHER WITH all houses, buildings, commons, mines, minerals, quarries, trees, woods, underwoods, fences, hedges, ditches, ways, waters, watercourses, franchises, rents, royalties, liberties, privileges, easements, profits, and appurtenances whatsoever to the said manor and hereditaments belonging or in anywise appertaining or now or heretofore held or occupied therewith, or reputed as part or parcel thereof, or as appurtenant thereto: AND ALL THE ESTATE, right, title, interest, property, claim, and demand whatsoever, of him the said A. B., in and to the said premises, and every part thereof: TO HAVE AND TO HOLD the hereditaments and premises hereby granted, or expressed so to be (hereinafter called the hereditaments hereby settled), unto the said E. F., G. H., and I. K., and their heirs, TO THE USE of the said A. B. and his heirs, until the solemnisation of the said intended marriage, and from and after the solemnisation thereof, TO THE USES following (that is to say), TO THE USE of the said E. F., G. H., and I. K., their executors, administrators, and assigns, for the term of ninety-nine years, without impeachment of waste, UPON the trusts hereinafter declared concerning the same: AND FROM AND AFTER the determination of the said term, and in the meantime subject thereto and to the trusts thereof, TO THE USE of the said A. B. and his assigns during his life, without impeachment of waste: AND FROM AND AFTER the decease of the said A. B., TO THE USE and intent that the said C. D. (in case she shall survive the said A. B.) and her assigns, shall from and after his decease,

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

1. Convey-  
ance by in-  
tended  
husband of  
parcels.

General  
words.

To hold to  
grantees to  
uses.

To trustees  
of pin-  
money  
term.

Subject to  
said term to  
use of  
husband  
for life.

After his  
death that  
wife shall  
take a  
jointure

was considered necessary and proper that the trustees to preserve (who were usually the trustees of the power of sale and exchange) should be different from the trustees of the term. And for a similar reason it was considered that if two separate terms were limited to the same trustees, there was a risk of the two terms coming together without the intervention of any other estate, in which case also there would be a merger. But as the limitation to trustees to preserve contingent remainders has now been discontinued, and in a simple settlement the trustees of the power of sale and exchange take no legal estate, and as moreover under the Judicature Act, 36 & 37 Vic. c. 66, s. 25, sub-sec. 4, there is now no legal merger, so long as a beneficial interest subsists in equity, there seems no sufficient reason for continuing the old practice of having different trustees for the powers and for the terms.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

Powers of  
distress and  
entry to  
secure  
jointure.

receive and take during her life for her jointure, and in lieu of all dower and freebench, the yearly rent or sum of £——, to be charged upon and issuing out of the hereditaments hereby settled, by equal half-yearly payments (b), on the 25th day of March, and the 29th day of September in every year (c), the first payment of a proportionate part thereof to be made on such of the said days as shall first happen after the decease of the said A. B.: AND TO THE FURTHER USE and intent that in case the said yearly rent-charge or any part thereof shall at any time be in arrear and unpaid for the space of twenty-one days next after any day hereinbefore appointed for the payment of the same, then and so often as the same shall happen it shall be lawful for the said C. D. and her assigns to enter into and distrain upon all or any part of the said hereditaments, and to dispose of the distress and distresses then and there found according to law as landlords may for rents reserved upon leases for years, to the intent that thereby or otherwise the said yearly rent-charge and every part thereof so in arrear and unpaid, and all costs, charges, and expenses occasioned by reason of the non-payment thereof, shall be fully paid and satisfied: AND TO THE FURTHER USE, and intent, that in case the said yearly rent-charge, or any part thereof, shall at any time be in arrear and unpaid for the space of forty days next after any day hereinbefore appointed for payment thereof, then and so often as the same shall happen (although the same shall not have been legally demanded) it shall be lawful for the said C. D. and her assigns to enter into and upon and to hold all or any part of the said hereditaments, and to receive and take the rents and profits thereof for her and their own use and benefit, until she or they shall thereby or otherwise be fully paid and satisfied the said yearly rent-charge, and the arrears due at the time of such entry, or afterwards

(b) By the Income Tax Act, 5 & 6 Vict. c. 35, sect. 103, all contracts, covenants, and agreements made and entered into for payment of any interest, rent, or other annual payment in full without allowing a deduction for income-tax are declared to be void. It has been held that this prohibition does not apply to a disposition by will, and accordingly that if by a will an annuity or rent-charge is directed to be paid free from income-tax, the annuitant will be entitled to have the whole amount paid without the tax being deducted. *Festing v. Taylor*, 3 Best & S. 217; 32 L. J. Q. B. 41. But a gift by will of an annuity to be paid without any deduction whatsoever is not a gift free from income-tax. *Abadam v. Abadam*, 33 L. J. Ch. 593.

(c) It is on the whole convenient to make the jointure payable on the usual rent days, otherwise it may happen that the day of payment falls shortly after a rent day, in which case the power to distrain would not arise until the next rent day. See *Hasluck v. Pidley*, L. R. 19 Eq. 271.

to become due during her or their being in possession of the said hereditaments, together with all costs, charges, and expenses, which she or they shall sustain by reason of the non-payment thereof, and such possession when taken to be without impeachment of waste: AND subject to and charged with the said yearly rent-charge, and the said powers and remedies for enforcing payment thereof (*d*), TO THE USE of the said E. F., G. H., and I. K., their executors, administrators, and assigns, for the term of one thousand years, to commence from the decease of the said A. B., without impeachment of waste: UPON the trusts hereinafter declared concerning the same: AND FROM AND AFTER the expiration or sooner determination of the said term of one thousand years, and in the meantime subject thereto, and to the trusts thereof, TO THE USE of the first son of the said A. B. by the said C. D. and the heirs male of the body of such first son issuing: AND for default of such issue, TO THE USE of the second and other sons of the said A. B. by the said C. D., severally, successively, and in remainder one after another, in order and course as they shall respectively be in priority of birth, and the heirs male of their respective bodies, the elder of such sons and the heirs male of his body being always to take before and be preferred to the younger of such sons and the heirs male of his and their body and respective bodies: AND for default of such issue, TO THE USE of the said A. B., his heirs and assigns for ever.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

Subject as  
aforesaid to  
trustees for  
one thou-  
sand years.

Subject to  
the before-  
mentioned  
term, &c.

To first and  
other sons of  
marriage in  
tail male.

Remainder  
to heirs of  
husband.

(*d*) Sometimes the settlor wishes to reserve to himself a power of appointment among his children. In such case there should be a separate jointure term, and the following limitations will be inserted between the jointure and the 1000 years' term:—

“TO THE USE of the said E. F., G. H., and I. K., their executors, administrators, and assigns, for the term of ninety-nine years, computed from the decease of the said A. B., UPON the trusts hereinafter declared concerning the same: AND from and after the determination of the said term, and in the meantime subject thereto and to the trusts thereof, TO THE USE of all or such one or more of the children of the said A. B. by the said C. D., or to the use of such person or persons in trust for all or any one or more of such children for such estate, or estates, and in such manner as the said A. B. shall by any deed or deeds, with or without power of revocation and new appointment at any time or times appoint, and in default of and until such appointment, and so far as any such appointment shall not extend.”

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

2. Appoint-  
ment of  
trustees.

2. THE said E. F., G. H., and I. K., shall be the trustees of these presents, not only with reference to the terms of years hereby limited to them and the trusts thereof, but also with reference to all other the powers, trusts, and provisions herein contained, AND in the subsequent clauses of these presents the expression "the trustees or trustee of these presents" means the said E. F., G. H., and I. K., or the survivors or survivor of them, or other the persons or person who shall for the time being be the trustees or trustee of these presents, whether by appointment under the statutory power in that behalf or otherwise.

AND with respect to the said term of ninety-nine years hereinbefore limited to the use of the said E. F., G. H., and I. K., their executors, administrators, and assigns, IT is HEREBY AGREED AND DECLARED as follows :

3. Trusts of  
pin money  
term.

3. THE trustees or trustee of these presents shall during the joint lives of the said A. B. and C. D., by and out of the rents and profits of the hereditaments comprised in the said term of ninety-nine years or by mortgage thereof, or any part thereof, for all or any part of the said term, or by any other reasonable ways or means, raise the annual sum of £——, and pay the same to the said C. D. for her sole and separate use by way of pin-money, free from the control of the said A. B., and so that she shall not have power to dispose thereof in the way of anticipation, the said annual sum to be paid by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first payment of a proportionate part thereof to be made on such of the said days as shall first happen after the solemnisation of the said intended marriage: BUT if the said C. D. shall die on any day not being one of the said half-yearly days of payment, leaving the said A. B. her surviving, her executors or administrators shall not be entitled to any proportionate part of the said annual sum for the period between the day of the said intended marriage or the last half-yearly day of payment (as the case may be) and the day of her decease, the said C. D.: AND subject to the said annual sum, shall permit the rents and profits of the said hereditaments to be received by the person or persons for the time being entitled to the said hereditaments in reversion immediately expectant upon the said term of ninety-nine years.

AND with respect to the said term of 1000 years hereinbe-

fore limited to the use of the said E. F., G. H., and I. K., their executors, administrators, and assigns. IT IS HEREBY AGREED AND DECLARED as follows :

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

4. If the said yearly rent-charge of £— hereinbefore limited to the said C. D. for her jointure, or any part thereof, shall be in arrear and unpaid for the space of sixty days next after any of the days hereinbefore appointed for payment thereof, then and so often as the same shall happen, the trustees or trustee of these presents shall, by and out of the rents and profits of the hereditaments comprised in the said term of one thousand years, or by mortgage thereof, or any part thereof, for all or any part of the said term, or any other reasonable ways or means, raise and pay to the said C. D. and her assigns the said rent-charge, and all arrears thereof, and all costs, charges, and expenses which the said C. D., or her assigns, or the said trustees or trustee, shall sustain by reason of the non-payment thereof.

4. Trusts of  
term to one  
thousand  
years.  
To secure  
jointure.

5. SUBJECT to the trust declared by the last preceding article, the hereditaments comprised in the said term of 1000 years shall be charged (a) with the sum of £15,000

Charge of  
£15,000 for  
portions.

(a) Where a strict settlement is made by a parent, or person *in loco parentis*, and portions are provided for younger children, the general rule (subject, however, to be controlled by the express language of the settlement) is that no child taking the estate by virtue of the settlement, before the portions become payable, will be allowed to take any share in the sum provided for portions; and this is so, whether the settlement does or does not contain an express provision to exclude him. Consequently, if an eldest son dies without issue before the time when the portions become distributable, the second son becoming an eldest son, and entitled as such to the settled estates, is excluded from a share in the portions. (*Chadwick v. Dolman*, 2 Vern. 527; *Lord Teynham v. Webb*, 2 Ves. senr. 198; *Re Bayley's Settlement*, L. R. 6 Ch. 592.) But if the second son is prevented from taking the settled estates by a disentailing deed executed by the eldest son before his death, such second son is not excluded, even though he may take the property under a resettlement. (*Spencer v. Spencer*, 8 Sim. 87; *Macoubrey v. Jones*, 2 K. & J. 684, disapproving of *Peacocke v. Pares*, 2 Keen, 689.)

Observa-  
tions as to  
the proper  
form of a  
trust for  
raising por-  
tions with  
regard to  
the time or  
ascertaining  
the character  
of  
younger  
son.

The rule by which a son being only a second son at the time his portion vests, but afterwards becoming an eldest son, is excluded, is an exception to the ordinary rule that the character of eldest son is to be ascertained at the time of vesting, and the exceptional rule is confined to cases where the provision is made by a parent, or a person *in loco parentis*. (*Hall v. Hewer*, Amb. 203; *Adams v. Adams*, 25 Beav. 652; *Sandeman v. Mackenzie*, 1 J. & H. 613.)

Nor does the rule above referred to apply where the provisions of the settlement clearly show that the shares are to vest in the children at twenty-one, and are to remain so whatever may occur afterwards. (*Windham v. Graham*, 1 Russ. 331.)

Previously to the late case of *Ellison v. Thomas* (1 De G. J. & S. 18), it was generally considered that under the form of a trust for raising portions then in common use, an eldest son was always excluded, even though

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

Definition of  
expression  
"younger  
children."

Proviso re-  
ducing  
charge to  
£5000, £8000  
or £12,000 if  
only one,  
two, or  
three  
younger  
children.

(reducible as provided in the latter part of this Article) for the portions of the younger children of the said intended marriage who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry under that age, and (if required), for the advancement of sons presumptively entitled to portions under the power in that behalf hereinafter contained: AND for this purpose the expression "younger children" shall be construed to mean and include every daughter of the said intended marriage and also every son not being at his birth or becoming during his minority an eldest or only son entitled for the time being under these presents to the hereditaments hereby settled for an estate in tail-male in possession or in remainder immediately expectant on the decease of the said A. B.: PROVIDED ALWAYS that if only one younger child being a son shall attain the age of twenty-one years or being a daughter shall attain that age or marry, such child shall have the sum of £5000 and no more for his or her portion, and if two younger children and no more being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry, such two children shall have the sum of £8000 and no more between them for

he died before coming into possession of the settled estate. (See *Gray v. Limerick*, 2 De G. & Sm. 370.) It seems, however, to be now settled that if an eldest son dies before his estate tail falls into possession without inheritable issue, and without having disentailed, his representatives will under the form above referred to take a portion. (*Ellison v. Thomas*, *ubi supra*; *Davies v. Huguenin*, 1 H. & M. 730; *Sing v. Leslie*, 3 H. & M. 68.) But it is conceived (though it has not been expressly decided), that this would not be the case if the eldest son so dying leaves a son who ultimately succeeds to the settled estate, nor if he concurs with his father in a disentailing assurance. (See *Collingwood v. Stanhope*, L. R. 4 H. L. 43, where, however, the eldest son survived his father, and would, but for his own disentailing deed, have become entitled in possession under the original settlement.)

The present state of the authorities makes it important that a settlement should express clearly whether the character of younger son is to be ascertained at the time of vesting, or at the time of payment. It is submitted that on the whole the time of vesting is the more convenient, so that a son being an eldest son at twenty-one is excluded in every case, and a son being a younger son at twenty-one does not lose his portion by afterwards becoming the eldest. A second son attaining twenty-one is thus in a position, in case he marries, to make a certain provision for his wife and children, which he could not do if his portion was liable to be defeated by the subsequent death of his elder brother. And if it is urged, as a possible hardship, that the wife and daughters of an eldest son who dies before his father may find themselves unprovided for, the reply is that an eldest son can always, with the concurrence of his father, bar the entail and resettle the estate, and thus make a proper provision for his family, and it may, as a general rule, be presumed that the father will not refuse his concurrence in a resettlement without some good reason.

their portions, and if three younger children and no more being a son or sons shall attain the age of twenty-one years or being a daughter or daughters shall attain that age or marry, such three children shall have the sum of £12,000 and no more between them for their portions, and the excess of the said sum of £15,000 over and above the said sum of £5,000, £8,000, or £12,000 (as the case may be), except such part (if any) of the money constituting the excess as under the power of advancement hereinafter contained, shall have been raised for any son who shall die or cease to be a younger child while under the age of twenty-one years, shall sink into the said hereditaments and cease to be charged thereon (b).

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

6. IF there shall be two or more children for whom portions are hereby provided the sum hereby provided for their portions shall be divided between such children or any of them in such shares and manner as the said A. B. shall by any deed or deeds or by his will appoint: AND in default of such appointment, and so far as any such appointment shall not extend, shall be divided between them in equal shares: BUT no child taking a share under any such appointment as aforesaid shall have any share in the unappointed money (if any) without bringing his or her appointed share into hotchpot and accounting for the same accordingly.

If two or more younger children, sum charged to be divided between them as husband shall appoint, and in default of appointment, equally.  
Hotchpot clause.

7. THE trustees or trustee of these presents shall by mortgage of the hereditaments comprised in the said term of 1000 years

Trustees to raise portions.

(b) Some care is requisite in framing a charge of portions, where, as is generally the case, it is wished to make the amount ultimately raiseable depend on the number who attain vested interests. The plan formerly in general use was to make the amount charged depend in the first instance on the number of children born, the portion of each child to be a vested interest at twenty-one, or in the case of a daughter at marriage, and a survivorship or accruer clause was added to the effect that if any child died before attaining a vested interest, his or her portion (original and accruing) should go to the others, except so far as any part might have been raised for his advancement, and with a proviso intended to prevent any child from having his or her portion increased by survivorship beyond the limit prescribed. This form was well understood and answered its purpose, but was somewhat cumbersome. In the later editions of Davidson's *Precedents* (vol. 3) the plan is adopted of making the amount raiseable depend on the number of children who attain twenty-one, or being daughters marry, with a proviso attached to the advancement clause for the purpose of preventing the whole machinery from being thrown out of gear by reason of a son dying during minority after having received part of his presumptive portion by way of advancement. In the above precedent the authors have adopted the plan, which appears to them equally effective and convenient, of charging the property in the first place with the *maximum*, subject to a proviso reducing the amount within the limits intended in the event of the number of children not being sufficient to require the *maximum*.

Plan adopted for making the amount vary according to the number of children:



SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

Time for  
payment of  
portions.

8. Trust to  
raise annual  
sums for  
mainte-  
nance of  
infant  
younger  
children.

9. Trustees  
to raise  
moiety  
of presump-  
tive shares  
of sons for  
advance-  
ment.

or any of them for the whole or any part of the said term, or by or out of the rents and profits thereof, or by any other reasonable ways or means, but subject to the trust declared by Article 4, raise the sum or sums of money to which any younger child or younger children shall become entitled for his, her, or their portion or portions under the foregoing charge at the time or times following (that is to say): THE portion of each child being a son shall be payable at his age of twenty-one years, or being a daughter at her age of twenty-one years or day of marriage which shall first happen, if the said A. B. shall be then dead, but if the said A. B. shall be then living, the raising and payment thereof shall be postponed until his death, unless he shall by writing direct the same to be raised and paid in his lifetime: And if after the time hereby appointed for payment of his or her portion any child shall become entitled to a further portion by reason of the death of a brother or unmarried sister under the age of twenty-one years, such further portion shall be payable to him or her immediately upon the accruer thereof: AND every portion shall bear interest after the rate of £4 per cent. per annum from the time when the same shall become payable.

8. IF at the decease of the said A. B. any child entitled in expectancy to a portion under the foregoing charge shall be under the age of twenty-one years, the trustees or trustee of these presents shall, with and out of the rents and profits of the hereditaments comprised in the said term, or by any other reasonable ways and means (but subject as aforesaid), raise such annual sum for the maintenance and education of each such minor as the said trustees or trustee shall think fit, not exceeding what the interest of the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and shall apply the annual sum to be so raised for the maintenance and education of such minor accordingly, with liberty for the said trustees or trustee to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see the application thereof.

9. IT shall be lawful for the trustees or trustee of these presents, upon the request in writing of the said A. B. during his life, and after his death, at the discretion of the said trustees or trustee, by all or any of the ways and means aforesaid to raise any part or parts not exceeding together one moiety of the presumptive portion of any son in the sum of money hereby charged for portions and advancement as aforesaid, and to apply the

same for the advancement, preferment, or benefit of such son in such manner as the said A. B. shall request, or as the said trustees or trustee shall after the death of the said A. B. think fit, and the money so raised shall be reckoned as part of the share of such son if he shall attain the age of twenty-one years.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

10. THE trustees or trustee of these presents may by any of the ways or means aforesaid raise such sum or sums of money as shall from time to time be required for the purpose of paying the costs and expenses of and incidental to the execution of the trusts of the said term, and shall apply the moneys to be so raised in payment of such costs and expenses accordingly.

10. Trustees  
to raise  
money to  
pay costs.

11. IF any mortgage shall be made under the aforesaid trusts during the life of the said A. B., he shall join therein and thereby covenant to pay the interest which shall accrue during his life on the principal sum thereby secured.

11. Husband  
to join in  
mortgages  
made in his  
lifetime.

12. SUBJECT to the foregoing trusts, the trustees or trustee of these presents shall permit the rents and profits of the hereditaments comprised in the said term of one thousand years or such part thereof as shall not from time to time be required for the purposes of the said trusts to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the said term.

12. Subject  
to above  
trusts rents  
of settled  
property to  
be paid to  
reversioner.

AND it is hereby further AGREED and DECLARED as follows:

13. IF the said A. B. shall marry again it shall be lawful for him at any time or times, either before or after each or any such future marriage (but subject to the said term of one thousand years hereinbefore limited and the trusts thereof), by any deed or deeds, or by his will to appoint to each or any such future wife in case she shall survive him, during her life, for her jointure, any yearly rent or sum not exceeding the yearly sum of £—, to be charged upon and issuing out of the hereditaments hereby settled, or any part thereof, and to be paid at such times and in such manner as the said A. B. shall think fit, and with the usual powers and remedies for enforcing payment of the said annual sum or yearly rent-charge, by distress and entry upon and perception of the rents and profits of the said hereditaments: AND ALSO, by any deed or deeds, or by his will, to charge the hereditaments hereby settled, or any part thereof, with any sum of money for the portion or portions of the child or all or any of the children of the said A. B. by such future wife or wives as aforesaid, not exceeding for one child the sum of £5,000, for two children the sum of £8,000, for three children the sum of £12,000,

13. Power to  
husband to  
jointure a  
future wife.

And to  
charge with  
portions for  
children of  
a future  
marriage.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

and for four or more children the sum of £15,000, to go to or be divided between or among such child or children, in such shares and manner as the said A. B. shall think fit, but so that (subject to any such power of advancement as is hereinafter mentioned) no portion shall be made to vest absolutely in any child being a son unless he shall attain the age of twenty-one years, or being a daughter she shall attain that age or marry under that age: PROVIDED ALWAYS that if any money shall become raiseable for the portions of the younger children of the now intended marriage under the foregoing charge in that behalf, the amount raiseable for the children of the said A. B. by any future wife or wives under any charge to be made pursuant to this present article shall not exceed such a sum as with the amount raiseable for the portions of the younger children of the now intended marriage as aforesaid shall make up the sum of £25,000: AND any charge made under this present article which would give to the children of the said A. B. by any such future wife or wives a greater amount than as last aforesaid shall fail of effect as to the excess.

14. Power to husband to limit term to trustees to secure jointure and to trustees to secure jointure and raise portions to be charged under last article

14. IF the said A. B. shall exercise the powers of charging conferred on him by the last preceding article, or either of such powers, it shall be lawful for him by the same or any other deed, or by his will, to limit and appoint the hereditaments hereby settled, or such part thereof as shall be charged as aforesaid, to any trustee or trustees for any term or terms of years with or without impeachment of waste (such term or terms to take effect in order of limitation immediately after the term of one thousand years hereby created): UPON such trusts as he the said A. B. shall think fit, for better securing the payment of the yearly rent-charge to be appointed to a future wife as aforesaid and for raising the money to be charged for the portion or portions of any child or children by a future wife or wives as aforesaid, together with the costs and expenses of and incidental to the execution of such trusts: AND the said A. B. may in and by such appointment direct or authorize the trustees or trustee of the term to be thereby created during the minority of any child entitled in expectancy to a portion under such charge as aforesaid to raise out of the rents and profits of the said hereditaments or otherwise such annual sum as the said A. B. shall direct, or as the said trustees or trustee shall think fit, not exceeding what interest on the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and

Power to husband to authorise trustees to raise annual sum for maintenance of minors.

to apply the same for the maintenance and education of such minor, with liberty for the said trustees or trustee to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: AND the said A. B. may also, if he thinks fit, by any such appointment as aforesaid, authorize the trustees or trustee to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son under such charge as aforesaid, and to apply the same for the advancement, preferment, or benefit of such son.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

And to  
raise one-  
half of pre-  
sumptive  
portions of  
sons for ad-  
vancement.

15. If and whenever any son of the said intended marriage, who, but for this clause would be entitled for the time being to the possession or receipt of the rents and profits of the hereditaments hereby settled as tenant in tail by purchase under the limitations hereinbefore contained shall be under the age of twenty-one years, the trustees or trustee of these presents shall enter into the possession or receipt of the rents and profits of the said hereditaments, and during the minority of such son, continue in such possession or receipt and manage the said hereditaments, and shall with and out of the said rents and profits, in the first place pay the expenses of management and all outgoings which ought to be paid in respect of the said hereditaments, including the succession duty payable in respect of the succession of such minor, and shall in the next place pay and apply such sum or sums of money as the said trustees or trustee shall think fit for the maintenance or education or otherwise for the benefit of such minor, with liberty for the said trustees or trustee to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof, and so far as the said rents and profits and other moneys shall not be applied as aforesaid, the said trustees or trustee shall invest the same in some or one of the modes of investment hereinafter authorised, with liberty for the said trustees or trustee to vary the said investments from time to time into or for others of the same or a like nature, and shall accumulate and invest in like manner the income of the said fund, and shall stand possessed of such fund and the accumulations thereof, upon the trusts following (that is to say): If the person during whose minority such accumulations shall have arisen shall attain the age of twenty-one years, then in trust for such person as part of his personal estate; But if such person shall die under the age of twenty-one years, then upon the

15. Power  
to trustees  
during  
minority of  
tenants in  
tail to  
manage  
property.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

Trustees to  
have full  
powers of  
manage-  
ment.

trusts, and with and subject to the powers and provisions hereinafter declared and contained concerning the moneys to arise from any sale under the power of sale hereinafter contained: AND the trustees or trustee having for the time being the management of the said hereditaments under the foregoing provision in that behalf, shall have ample powers to appoint and remove stewards, agents, and servants, to direct repairs; alterations, and improvements, to reduce rents, accept surrenders of leases and tenancies, to make allowances to tenants and others, to fell timber for sale, or otherwise to effect and keep up insurances against loss or damage by fire or tempest, and to do, or cause to be done, all such acts and things relating to the management of the said hereditaments as the said trustees or trustee shall, in their or his discretion, think fit.

16. Power to  
grant leases  
for twenty-  
one years,

16. IT shall be lawful for the said A. B. during his life, and after his decease for the trustees or trustee of these presents, during the minority of any son of the now intended marriage, who if of full age would for the time being be entitled under these presents to the possession or the receipt of the rents and profits of the hereditaments hereby settled as tenant in tail male by purchase, to appoint by deed by way of lease the hereditaments hereby settled, or any part thereof (either with or without any easements, rights, or privileges to be exercised and enjoyed in, over, upon, or under any lands not included in such lease) to any person or persons for any term of years not exceeding twenty-one years, to take effect in possession or within one year from the making thereof, at the best yearly rent that can reasonably be obtained for the same without taking anything in the nature of a fine or premium for the making thereof, and so that such lease be not made without impeachment of waste, and shall contain a covenant by the lessee to pay the rent, and a condition of re-entry on non-payment thereof, and so also that

and building  
leases for  
ninety-nine  
years.

a counterpart of the lease be executed by the lessee: AND ALSO to appoint by deed by way of lease any part of the hereditaments hereby settled (either with or without any easements, rights, or privileges to be exercised or enjoyed in, over, upon, or under any lands not included in such lease) to any person or persons for the purpose of building thereon, or of rebuilding or repairing any existing buildings thereon, or otherwise improving the same: BUT so that every lease under this power shall be for a term not exceeding ninety-nine years, to take effect in possession, or within one year from the making thereof, and

shall be at the best rent that can be reasonably obtained for the same, without taking anything in the nature of a fine or premium, with liberty however to reserve during the first five years of the said term or during any less period a peppercorn rent or a smaller rent than the full rent ultimately payable, which smaller rent may be either of uniform or of periodically increasing amount: AND so also that every such lease shall contain a covenant by the lessee to pay the rent, and a condition of re-entry on non-payment thereof, and so also that a counterpart of the lease be executed by the lessee (a): AND ALSO to appoint by deed by way of lease, all or any of the mines, quarries, beds, and strata of coal, ironstone, fire-clay, common

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

And mining  
leases.

(a) The following power will in some cases be found desirable, instead of that in the text :—

AND ALSO to appoint by deed by way of lease any part of the hereditaments hereby settled to any person or persons who shall be willing to take the same for the purpose of effectually repairing any building or buildings standing on the land thereby leased, or for the purpose of erecting on such land or any part thereof, any new building or buildings, whether for habitation, or for a church, chapel, school, court-house, market, museum, or any other public purpose, or for coal, iron, or other works, or for manufacturing purposes, or for shops, with or without liberty to the lessee to pull down any erections or buildings standing upon such land or any part thereof, and to sell or make use of the materials for the purpose of such new building or buildings, and also with or without liberty for the lessee to lay out, use, and appropriate any part or parts of the land leased as aforesaid, as or for yards, gardens, drains, watercourses, ponds, or other conveniences to be held, occupied, or enjoyed with any such building or buildings, and either with or without any rights of way or watercourse, or other easements or rights convenient for the enjoyment of the demised premises, over any other part of the hereditaments and premises hereby granted, or expressed so to be: BUT SO, nevertheless, that every lease made under this present power shall be for a term of years not exceeding ninety-nine years, and shall take effect in possession, and shall be at the best yearly rent which can be reasonably gotten under the circumstances of the case without taking anything in the nature of a fine or premium for the making thereof, with liberty, however, &c. (as above).

Power to  
grant build-  
ing and  
repairing  
leases for  
ninety-nine  
years.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

clay, stones, and other minerals, metals, and substances whatsoever lying within, under, or upon, or otherwise forming part of the hereditaments hereby settled, and either with or without any houses or lands convenient to be held or occupied with the same, and either with or without the surface of any lands under which the same or any part thereof shall lie, and with such liberties, powers, and privileges of working and getting the said mines and premises, and of stacking and depositing, leading and carrying away the produce thereof, and of converting such produce into coke, bricks, or other articles or things, and of sinking, driving, erecting, constructing, and using pits, shafts, levels, drifts, airgates, watergates, furnaces, engines, machinery, houses for workmen, and other houses, buildings, sheds, canals, wharves, railways, waggon ways, and other ways, works, devices and conveniences, and with all such other easements, rights, and privileges to be exercised in, over, upon, or under the hereditaments hereby settled or any part thereof, in connection with the mines and premises to be included in such lease as the person or persons for the time being exercising this power shall think fit; BUT so that every lease under this power shall be for a term not exceeding sixty years to take effect in possession, or within one year from the making thereof, and shall be at the best rent or rents, royalty or royalties, that can be reasonably obtained for the same, without taking anything in the nature of a fine or premium for the making thereof, and so also that every such lease shall contain a covenant by the lessee to pay the rents or royalties thereby reserved, and also a condition of re-entry on non-payment thereof, and so also that a counterpart of such lease be executed by the lessee: [AND ALSO (b) by deed to appoint any part of the hereditaments hereby settled (either with or without any easements, rights, or privileges to be exercised in, over, upon, or under any lands not included in such appointment) for an estate in fee simple or for any less estate, to any person or persons who shall covenant or agree to erect thereon any house or building, or to re-build or repair any house or building standing thereon, or otherwise to improve the property so appointed to him or them, such appointment to take effect in possession and not in reversion, or by way of future interest, and so that upon such appointment there shall

Power to  
grant in fee  
for building  
purposes,  
subject to  
perpetual  
rent.

(b) In some parts of the country it is customary, instead of granting building leases, to convey the land in fee simple, subject to the payment of a perpetual rent. Where this custom prevails, the form within brackets will be found useful.

be reserved and made payable the best yearly rent in fee that can be reasonably had or gotten for the same, without taking anything in the nature of a fine or premium for the making thereof, such rent to be charged upon and issuing out of the hereditaments so to be appointed as aforesaid, and to be limited in such manner and form as that the said yearly rent shall be received by the person or persons who under the limitations of these presents would for the time being be entitled to the hereditaments in respect of which such rent shall be reserved if such appointment had not been executed, and such rent shall be secured by covenant, and also by powers of distress and entry for non-payment thereof after a reasonable time.]

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

17. It shall be lawful (c) for the person or persons for the time being authorized to grant leases under the foregoing powers from time to time to enter into preliminary contracts for the granting of leases under such powers and also to rescind or vary any such contracts and to enter into new contracts for the like purpose: AND every such contract shall be binding on the person or persons entitled to the hereditaments hereby settled under these presents, and with respect to contracts for building, repairing, or improving leases, any such contract may provide for the granting of one lease or for two or more separate leases of the land comprised therein and the buildings thereon, as and when such buildings shall be covered in or at such other time or times as may be mentioned in such contract, and it may also provide in the case of separate leases for the apportionment of the entire rent between the several premises comprised in such leases: AND it may also provide (if thought desirable) that the whole of the rent may be reserved on the lease or leases of a given part of the premises to be leased as aforesaid, and that the residue of the said premises shall be subject to a peppercorn rent only: AND such contract may also provide for the postponement of the payment of the full rent mentioned therein for a period not exceeding five years from the date thereof, and for the payment in the meantime of a peppercorn rent or of a smaller rent than the full rent ultimately payable, which smaller rent may be either of uniform or of periodically increasing amount, and every contract entered into under this power may also contain such other proper and reasonable provisions as may be agreed on between the parties thereto.

Power to  
enter into  
preliminary  
contracts for  
leases.

(c) This and the next clause are useful when building agreements are contemplated.



**SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.**

18. Leases under powers valid though not in accordance with contract.

18. ANY lease purporting to be granted under any of the foregoing powers shall be valid and effectual if made in accordance with the provisions herein contained in relation to such power, although the same may have been preceded by a contract the terms of which have not been complied with, and no person deriving title under any such lease shall be bound or concerned to see or enquire whether the same has been preceded by a contract nor shall such contract form a necessary part of the title to such lease.

19. Power to accept surrenders of existing leases.

19. THE person or persons for the time being authorized to grant leases under the foregoing powers may, at any time, accept the surrender of any existing lease of any part of the hereditaments hereby settled (whether such lease is now existing or shall have been created under the powers of these presents), and if any such surrender shall be made for the purpose of renewal an allowance may be made for the value of the lessee's interest thereunder in fixing the terms of the new lease.

20. Power to give sites for churches, &c.

20. IT shall be lawful for the person or persons hereinbefore authorized to grant leases under the foregoing powers from time to time to appoint part of the hereditaments hereby settled by way of gift and without any valuable consideration to any person or persons or body corporate in fee simple as and for the site of a church, school, hospital, or almshouse, or as and for a yard, garden, or ground to be annexed thereto, or for a burying ground, or for any other religious or charitable purpose, provided that the total quantity of land to be given as aforesaid in any one parish shall not exceed — acres.

21. Power to trustees at request of tenant for life or after his death at their discretion to raise money by mortgage to be expended in the improvement of land.

21. IT shall be lawful (a) for the trustees or trustee of these presents at any time or times upon the request in writing of the said A. B. during his life, and after his decease during the minority of any son of the now intended marriage, who if of full age would for the time being be entitled to the possession or receipt of the rents and profits of the hereditaments hereby settled as tenant in tail male by purchase at the discretion of the said trustees or trustee, to expend any sum or sums of money in the improvement of any land comprised in this settlement, whenever the proposed improvement is such as in the opinion of the said trustees or trustee will permanently increase the value of the settled estate, and for this purpose the term "the improvement of land" shall have the same meaning as is

(a) The above is suggested as a useful power rendering it unnecessary to resort to the Land Improvement Act.

assigned to it by section 9 of the Improvement of Land Act, 1864, in like manner as if that section had been repeated herein substituting the words "the trustees or trustee of these presents" for the words "the commissioners:" AND it shall be lawful for the said trustees or trustee upon such request or at such discretion as aforesaid to raise any sum or sums of money which may be required to be expended in the improvement of land as aforesaid by mortgage of the hereditaments hereby settled or any part thereof.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

22. It shall be lawful for the trustees or trustee of these presents at any time or times upon the request in writing of the said A. B. during his life, and after his decease during the minority of any son of the now intended marriage who if of full age would for the time being be entitled to the possession or the receipt of the rents and profits of the hereditaments hereby settled as tenant in tail male by purchase, at the discretion of the said trustees or trustee, to sell the hereditaments hereby settled, or any part thereof, or any easements, rights or privileges to be exercised or enjoyed in, over, upon, or under the said hereditaments, or any part thereof, or to exchange the said hereditaments, or any part thereof, for any other hereditaments in England or Wales, and upon any such exchange, to give or receive money for equality of exchange: [AND ALSO TO ENFRANCHISE any copyhold or customary hereditaments held of any manor hereby settled either in consideration of a gross sum of money or of a yearly rent to be charged upon and issuing out of the hereditaments to be so enfranchised, or partly for one and partly for the other of such considerations, and either with or without a re-grant of any rights of common or other rights or privileges which were appurtenant to the same while copyhold, and upon such terms and conditions in all respects as the said trustees or trustee shall think fit (c): AND ALSO to make partition of any hereditaments an undivided part or share whereof is hereby settled with the person or persons entitled to or having power to dispose of the other undivided part or share, or parts or shares thereof, and upon any such partition to give or receive any money by way of equality of partition (d):] AND ALSO to raise any money which may be required for equality of exchange [or partition] by a mortgage of

22. Power to  
trustees to  
sell or  
exchange.

To enfranchise copyholds,

and to make partition.

(c) This power will be omitted if the settlement does not comprise any manor of which copyholds are holden.

(d) This power will be omitted if the settlement does not include any undivided share of hereditaments.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

Power to  
trustees to  
revoke uses  
and limit  
new uses, to  
carry into  
effect sales,  
&c.

23. Trustee  
to apply sale  
moneys in  
payment of  
incum-  
brances  
affecting  
settled  
estates, or  
in purchase  
of other  
lands.

Lands to be  
purchased,  
&c., to be  
settled to  
same uses.

the hereditaments hereby settled, or any part thereof: AND ALSO for the purpose of carrying into effect any such sale or exchange [enfranchisement or partition] as aforesaid, to revoke by deed the uses for the time being subsisting in the hereditaments [or undivided share of hereditaments] which shall be the subject thereof, and to appoint by deed any new use or uses concerning the same, but subject and without prejudice to any lease or mortgage which may have been previously made of the said hereditaments [or share of hereditaments] under any of the powers and provisions of these presents.

23. THE trustees or trustee of these presents shall receive the moneys to arise from any such sale or exchange [enfranchisement or partition] as aforesaid, and may apply the same or any part thereof in or towards satisfaction of any principal moneys for the time being charged on any hereditaments hereby settled or for any purpose for which money is in and by these presents authorized to be raised by mortgage of the said hereditaments or any part thereof, and if and so far as such moneys shall not be applied in manner aforesaid the said trustees or trustee shall invest the same in the purchase of other hereditaments to be situate in England or Wales, being freehold or copyhold of inheritance or leasehold convenient to be held with the hereditaments for the time being subject to the uses of these presents, with liberty to make any such purchase subject to special conditions as to title or otherwise without being answerable for any loss arising thereby: BUT every purchase made during the life of the said A. B., shall be with his consent in writing: AND the said trustees or trustee shall settle, or cause to be settled, the hereditaments to be purchased or received [upon partition or] in exchange as aforesaid, if of freehold tenure, to the uses, upon the trusts, and with and subject to the powers and provisions herein declared and contained concerning the hereditaments hereby settled or such of them as shall be then subsisting and capable of taking effect, but so as not to increase or multiply charges or powers of charging, and if of copyhold or leasehold tenure upon such trusts and with and subject to such powers and provisions as will correspond as nearly as the difference of tenure will permit with the last-mentioned uses, trusts, powers, and provisions, but so as not to increase or multiply charges or powers of charging, BUT SO THAT if any of the hereditaments to be purchased or received [upon partition or] in exchange as aforesaid shall be of copyhold or customary nature, not admitting of the creation of

estates tail, or shall be held by lease for years, the same shall not vest absolutely in any person who, by virtue of the limitations hereinbefore contained, shall become tenant in tail by purchase of the freehold hereditaments hereby settled, unless he shall attain the age of twenty-one years, but upon the death of such person under that age, shall go and devolve as if the same were freehold of inheritance and had been settled accordingly.

[24. IF any of the hereditaments so to be purchased or received in exchange as aforesaid shall be held by a lease or leases for lives or for years, proper provisions may be inserted in the settlement so to be made thereof as aforesaid, for renewing the same from time to time as occasion shall require, and the fines, fees, and expenses of renewal or renewals may from time to time be defrayed out of the improved yearly rents and profits of the hereditaments of which such renewals shall be made as aforesaid, or by mortgage thereof, if found necessary : PROVIDED ALWAYS, that neither the provisions hereinbefore contained or directed to be inserted as aforesaid in reference to such renewals, nor the mode in which the said fines, fees, and expenses of renewal may in fact be raised, shall vary the rights of parties, or affect the ordinary rules of equity in reference to the ultimate adjustment of the burden of such fines, fees, and expenses, and the interest thereof, between or amongst the several persons successively entitled to the premises (f).]

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

[24. Proper provisions to be inserted in every settlement for renewal of leaseholds for years or lives.]

[25. THE power of sale hereinbefore contained shall be deemed to include a power of selling hereditaments, or easements, rights, or privileges in, upon, over, or under hereditaments, to any railway or other company or public body authorised to take the same for the purpose of their undertaking, and of agreeing with any such company or public body as to the sum to be paid for the purchase thereof, and as to the compensation (if any) to be paid for severance or any other damage or injury to any hereditaments not included in such sale, and also as to any works to be made and maintained for the accommodation of any such hereditaments, and all purchase and compensation moneys to be paid by any such company or public body, and whether the amount thereof shall have been ascertained by agreement or by a jury or by arbitration or otherwise, shall for all the purposes of these presents, be treated as moneys produced by a sale of hereditaments under the foregoing power of sale (f).]

[25. Power of sale to be deemed to include sales to railway companies &c.]

[26. UNDER the foregoing powers any lands may be sold [en-

[26. Lands may be sold

(f) Articles 24 and 25 may be omitted where brevity is desired.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

subject to  
exception  
of mines,  
and vice  
versa.]

franchised], given, or taken in exchange, or purchased, with or subject to an exception or reservation of all or any of the mines and minerals thereunder, and of such rights and powers as may be deemed necessary and convenient for working, getting, and raising the same, and the mines and minerals under any lands may be sold, given, or taken in exchange, or purchased separately and apart from the surface of the same lands or any part thereof, and with such rights and powers as may be deemed necessary and convenient for working, getting, and raising the same mines and minerals, as the trustees or trustee of these presents shall think fit (*g*).]

27. Purchase  
moneys,  
until they  
are laid out  
in land, to  
be invested.

27. THE trustees or trustee of these presents may postpone the investment in the purchase of hereditaments of the moneys to arise from any such sale, or exchange [enfranchisement or partition] as aforesaid, so long as they or he shall think fit, and in the meantime may invest the same in any of the modes of investment hereinafter authorised, and may vary the said investments from time to time into or for others of the same or a like nature, but so that every such investment or variation of investment as aforesaid made during the life of the said A. B., shall be with his consent in writing, and the income arising from every or any such investment shall be paid and applied to the person or persons and in the manner to whom and in which the rents and profits of the hereditaments to be purchased therewith would be payable or applicable, in case such purchase or purchases and settlement thereof as aforesaid were then actually made (*h*).

(*g*) This clause may be omitted where the property is not in a mineral district.

(*h*) If it is wished to rely on the provisions of Lord Cranworth's Act, relating to powers of sale and exchange, the following clause may be substituted for Articles 22 to 27 inclusive, in the text :—

Power of  
sale and  
exchange  
under Lord  
Cranworth's  
Act.

THE trustees or trustee of these presents shall have a power of sale and exchange over the hereditaments hereby settled, and every sale and exchange made under such power, and every purchase of other hereditaments with the moneys to be produced by any such sale or to be received for equality of exchange, and every investment of the same moneys in the meantime, shall be made with the consent in writing of the said A. B. during his life, and after his decease during the minority of any son of the now intended marriage, who, if of full age, would be entitled to the receipt of the rents and profits of the hereditaments hereby settled, as tenant in tail by purchase, at the discretion of the said trustees or trustee.

28. It shall be lawful for the trustees or trustee of these presents at any time or times upon such request or at such discretion as aforesaid and with a view to any intended lease or leases or sale or sales for building purposes to lay out, make, and construct any roads, sewers, drains, and other conveniences in, over, upon, or under any lands hereby settled, or to convert or appropriate any such lands into or as and for squares, open spaces, or pleasure or ornamental grounds, or otherwise to arrange the same as may be thought desirable, having regard to any such intended lease or leases sale or sales as aforesaid, and to raise any money which may be required for any of the aforesaid purposes by a mortgage of the hereditaments hereby settled, or any part thereof.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

Power to  
lay out  
roads, &c.

29. UPON any mortgage by the trustees or trustee of these presents, or by the trustees or trustee of any term created under or to be made in exercise of any of the trusts or powers herein contained, the person or persons advancing money thereon shall not be bound or concerned to see or enquire whether such money is actually required for the purposes of such trusts and powers, or otherwise as to the propriety of such mortgage.

29. Mort-  
gages not  
to be bound  
to inquire as  
to regularity  
of mortgage.

30. (*Investment clause, supra, p. 229.*)

30. General  
investment  
clause.

31. THE statutory power of appointing new trustees shall for the purposes of these presents be vested in the said A. B. during his life, and upon any appointment under the said power the number of trustees may be altered, provided that the number shall not be reduced below two: AND IF at any time the number of trustees shall be reduced by death or otherwise to one, a new trustee or new trustees shall be appointed as soon as conveniently can be, but in the meantime and until such appointment all acts of the sole trustee in execution of the trusts, powers and discretions hereby reposed and vested in the trustees shall be valid and effectual.

31. Power of  
appointing  
new  
trustees.

32. THE said A. B. doth hereby for himself, his heirs, executors and administrators covenant with the said E. F., G. H., and I. K., and their heirs, THAT notwithstanding any act, deed, or thing by the said A. B. or by any of his ancestors, done or executed, or knowingly suffered to the contrary, he the said A. B. now hath good right to grant the hereditaments hereby settled to the uses hereinbefore declared concerning the same, and in manner aforesaid free from incumbrances: AND FURTHER that he the said A. B. and all persons having or lawfully or equitably claiming any estate or interest in the said

32. Covenant  
for title by  
settlor.

SETTLEMENT  
OF REAL  
ESTATE WITH  
USUAL  
PROVISIONS.

hereditaments, or any of them, or any part thereof, from, under, or in trust for the said A. B. or from or under any of his ancestors, shall and-will, from time to time and at all times hereafter, at the request and cost of any person or persons for the time being interested in the said hereditaments or any part thereof under the uses hereinbefore declared concerning the same, do and execute, or cause to be done and executed, all such acts, deeds, and things whatsoever, for further and more perfectly assuring the said hereditaments and every part thereof, to the uses and in manner aforesaid as shall or may be reasonably required.

33. Settlement to be void if marriage not solemnized within twelve months.

33. PROVIDED ALWAYS, that if the said intended marriage shall not be solemnised within twelve calendar months from the date of these presents, then and in such case these presents, and the uses, trusts, powers, and provisions hereinbefore declared and contained, shall be void and of no effect, and the hereditaments hereby settled shall revert and go to the use of the said A. B., his heirs and assigns for ever.

34. (*Marginal note clause, if any, supra, p. 231.*)

IN WITNESS, &c.

## No. XXIX.

RE-SETTLEMENT BY  
FATHER AND  
ELDEST SON  
ON  
MARRIAGE.

RE-SETTLEMENT of REAL ESTATE *by a FATHER and ELDEST SON on the MARRIAGE of the latter.* LIMITATIONS to secure a RENT CHARGE to INTENDED HUSBAND during joint lives of himself and father, and after his death a JOINTURE to INTENDED WIFE. Subject thereto to FATHER for LIFE, remainder to INTENDED HUSBAND for life, remainder to TRUSTEES for a TERM to secure jointure and raise PORTIONS for YOUNGER CHILDREN, remainder to FIRST AND OTHER SONS of intended marriage successively in TAIL MALE; remainder to SUCH USES as FATHER and HUSBAND shall jointly APPOINT, and subject thereto to FIRST AND OTHER SONS of HUSBAND by any FUTURE MARRIAGE successively in TAIL MALE; remainder to the other SONS already born of the FATHER for life and their SONS in TAIL MALE successively with remainder to AFTER BORN sons of FATHER successively in tail male with ultimate remainder to son in fee simple. POWER to SON to JOINTURE a future wife and charge with PORTIONS for children by a FUTURE MARRIAGE. POWER to other TENANTS for LIFE to JOINTURE and charge with PORTIONS. USUAL POWERS of LEASING, SALE and EXCHANGE. PROVISIO keeping on foot POWERS of LEASING, &c., in FORMER SETTLEMENT.

THIS INDENTURE, made the — day of —, BETWEEN Parties, W. B. of, &c. (*father*), of the first part, A. B. of, &c. (*intended husband*), of the second part, C. D. of, &c. (*intended wife*), of the third part, and E. F. of, &c., G. H. of, &c., and I. K. of, &c. (*trustees*), of the fourth part: WHEREAS by an indenture, &c. (*date and parties*), divers hereditaments therein described were settled and assured (after certain uses which have since determined or failed to take effect) to the use of the said W. B. and his assigns during his life without impeachment of waste, with remainder to the use and intent that—his then intended wife, if she should survive the said W. B., should during her life

Recital  
of existing  
settlement.



RE-SETTLEMENT BY  
FATHER AND  
ELDEST SON  
ON  
MARRIAGE.

receive and take a yearly rent-charge of £500 for her jointure, charged upon the said hereditaments, with usual powers and remedies for recovering the same when in arrear, and subject thereto to the use of (*trustees*), their executors, administrators and assigns for the term of 500 years, upon the usual trusts for better securing the said rent-charge and also for raising (in the event which happened) the sum of £10,000 for the portions of the younger children of the said W. B. by the said — his wife: AND from and after the expiration or sooner determination of the said term, and in the meantime subject thereto and to the trusts thereof to the use of the first and other sons of the said W. B. successively in tail with divers remainders over: AND in the said indenture are contained the usual powers of leasing and of sale and exchange and a direction that the moneys to arise from any such sale shall be laid out in the purchase of other hereditaments to be settled to the like uses, and shall in the meantime be invested in or upon such stocks, funds, or securities as therein mentioned: AND ALSO powers enabling the said W. B. to jointure a future wife and to charge the settled hereditaments with portions for his children by a future wife: AND WHEREAS some of the hereditaments comprised in the said recited indenture of settlement have been from time to time disposed of by way of sale or exchange under the powers in that behalf contained in the said indenture, and the proceeds of such sales have been laid out in the purchase of other hereditaments which have been conveyed to the uses of the said indenture of settlement: AND WHEREAS the particulars of the hereditaments now subject or believed to be subject to the uses of the said indenture of settlement are set forth in the schedule hereunder written: AND WHEREAS the said A. B. is the first son of the said W. B. by the said —, his wife, and he attained the age of twenty-one years on the — day of — last: AND WHEREAS by an indenture bearing even date with these presents, and made between the said W. B. of the first part, the said A. B. of the second part, and X. Y. of the third part (and which indenture is intended to be enrolled in the High Court of Justice as a disentailing assurance) the said W. B. and A. B. have granted and conveyed all the hereditaments comprised in and settled by the hereinbefore recited indenture of settlement except such of them as have been disposed of by way of sale or exchange as aforesaid: And also (by way of grant and not of exception) all the hereditaments which were purchased

Sales and  
exchanges  
under power  
in existing  
settlement.

That A. B.  
is eldest son.

Disentailing  
deed.

or received in exchange and have been conveyed to the uses of the said indenture of settlement as aforesaid: AND ALL other (if any) the hereditaments now subject, either at law or in equity, to the uses of the said indenture of settlement with their appurtenances unto the said X. Y. and his heirs (subject to the said yearly-rent charge of £500 limited to the said — (wife) by the said indenture of settlement and to the powers and remedies for enforcing payment thereof, and also to the said term of 500 years and the trusts thereof, but freed and discharged from the estate tail of the said A. B., and all remainders estates and powers to take effect after the determination or in defeasance thereof): To such uses, upon such trusts, and with and subject to such powers and provisions as the said W. B. and A. B. shall by any deed or deeds, with or without power of revocation and new appointment, jointly appoint: AND in default of and until such appointment, and so far as any such appointment shall not extend To the uses therein mentioned: AND WHEREAS a marriage is intended shortly to be solemnised between the said A. B. and the said C. D.: AND UPON the treaty for the said intended marriage it was agreed that the hereditaments intended to be hereby appointed should be settled to the uses and in the manner hereinafter expressed: NOW THIS INDENTURE, made in consideration of the said intended marriage WITNESSETH and DECLARES as follows:—

RE-SETTLEMENT BY FATHER AND ELDEST SON ON MARRIAGE.

Intended marriage and agreement for settlement.

1. THE said W. B. and A. B. in exercise of the power for this purpose given to them by the said indenture bearing even date herewith, and of all other powers (if any) them hereunto enabling, do by these presents appoint that if the said intended marriage shall be solemnised within twelve calendar months computed from the date of these presents, ALL and singular the hereditaments described in the schedule to these presents, and all other (if any) the hereditaments comprised in and assured by the said indenture bearing even date with these presents, together with, &c. (*general words, but omitting all the estate, &c.*), shall from and after the said intended marriage (but subject to the said yearly rent-charge of £500 by the said indenture of settlement limited to the said — as aforesaid, and to the powers and remedies for enforcing payment thereof, and to the said term of 500 years created by the said indenture of settlement and the trusts thereof) GO, REMAIN, AND BE to the uses following (that is to say), To THE USE and intent that the said A. B. shall during the joint lives of himself and the said W. B.

Appointment by father and intended husband of hereditaments in schedule.

(Subject to charges under existing settlement.)

To use that son shall take a rent-charge

RE-SETTLEMENT BY  
FATHER AND  
ELDEST SON  
ON  
MARRIAGE.

during joint  
lives of  
father and  
son.

And that  
intended  
wife shall if  
she survive  
son take a  
jointure.

Power of  
distress,

and entry.

And subject  
thereto to  
use of  
trustees for  
term of 99  
years,

Remainder  
to father  
for life.

receive and take the yearly rent or sum of £—— to be charged on the hereditaments hereby settled, and to be paid by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first payment of a proportionate part thereof to be made on such of the said days as shall first happen after the solemnisation of the said intended marriage.

AND TO THE FURTHER USE and intent that the said C. D., if she shall survive the said A. B. shall from and after the decease of the said A. B. receive and take during her life for her jointure and in lieu of all dower and freebench, such yearly rent or sum as is next hereinafter mentioned (that is to say) if and so long as the said W. B. shall be living, the yearly rent or sum of £——, and after the decease of the said W. B. the yearly rent or sum of £——, to be paid by equal half-yearly payments on the aforesaid days, the first payment of a proportionate part thereof to be made on such of the said days as shall first happen after the death of the said A. B.: AND TO THE FURTHER USE AND INTENT that if any yearly rent-charge hereinbefore limited shall be in arrear and unpaid for the space of twenty-one days next after any day hereby appointed for payment thereof, then and in every such case it shall be lawful for the person whose yearly rent-charge shall be so in arrear to enter, &c. (*power of distress, supra*, p. 300). AND TO THE FURTHER USE AND INTENT that if any yearly rent-charge hereinbefore limited shall be in arrear and unpaid for the space of forty days next after any day hereinbefore appointed for the payment thereof, then and in every such case it shall be lawful for the person whose yearly rent-charge shall be so in arrear to enter (*power of entry, supra*, p. 300). AND subject to the said yearly rent-charges and the powers and remedies for enforcing payment thereof, To the use of the said E. F., G. H., and I. K., their executors, administrators, and assigns for the term of 99 years, computed from the date of these presents UPON the trusts hereinafter declared concerning the same: AND from and after the expiration or sooner determination of the said term, and in the meantime subject thereto and to the trusts thereof, To THE USE of the said W. B. and his assigns during his life without impeachment of waste in restoration of his former life estate under the said indenture of settlement, and so that the powers of jointuring a future wife and of charging with portions for his children by a future wife given to him by the said indenture of settlement shall be also restored and remain in full force: AND after the

decease of the said W. B., To THE USE of the said A. B. and his assigns for his life without impeachment of waste, and after his decease To THE USE of the said E. F., G. H., and I. K., their executors, administrators, and assigns, for and during the term of 1000 years, computed from the decease of the survivor of the said W. B. and A. B., upon the trusts hereinafter declared concerning the same: AND from and after the determination of the said term, and in the meantime subject thereto and to the trusts thereof, To THE USE of the first and other sons of the said A. B. by the said C. D. successively and in remainder one after another according to seniority of age and the heirs male of their respective bodies, the elder of such sons and the heirs male of his body being always to take before the younger of such sons and the heirs male of his and their body and respective bodies: AND in default of such issue, To THE USES as the said W. B. and A. B. shall by any deed or deeds with or without power of revocation and new appointment, jointly appoint, and in default of and until such appointment, and so far as any such appointment shall not extend, To THE USE of the first and other sons of the said A. B. by any future wife or wives successively and in remainder one after another, according to seniority of age, and the heirs male of their respective bodies, the elder, &c., and in default of such issue, To THE USE of D. B. (*the second son of the said W. B.*), and his assigns during his life without impeachment of waste and after his decease, To THE USE of, &c. (*first and other sons of D. B. successively in tail male with similar remainders to each son already born of W. B. and to his first and other sons successively in tail male*): AND in default of such issue, To THE USE of each and every son of the said W. B. hereafter to be born successively and in remainder one after another according to seniority of age, and the heirs male of their respective bodies, the elder, &c.: AND in default of such issue, To THE USE of the said A. B., his heirs and assigns for ever.

RE-SETTLEMENT BY FATHER AND ELDEST SON IN MARRIAGE.

Remainder to husband for life, with remainder to trustees for term of 1000 years, with remainder to first and other sons of marriage in tail male.

To such uses as father and husband shall jointly appoint, and subject thereto,

To first and other sons of husband by a future wife in tail male.

With remainder to other sons of father for life, and their sons in tail male successively with remainder, To use of after-born sons of father successively in tail male.

With remainder.

To husband in fee simple.

2. (*Definition of term "trustees or trustee of these presents," supra, p. 302.*)

And with respect to the said term of 99 years hereinbefore limited to the use of the said E. F., G. H., and I. K., their executors, administrators and assigns, IT IS hereby AGREED AND DECLARED as follows:—

3. If any yearly rent-charge hereinbefore limited shall be in arrear for the space of sixty days next after any of the days

3. Trusts of term for securing

RE-SETTLEMENT BY  
FATHER AND  
ELDEST SON  
ON  
MARRIAGE.  
yearly rent-  
charges.

hereby appointed for payment thereof, then and so often as the same shall happen, the trustees or trustee of these presents shall by and out of the rents and profits of the hereditaments comprised in the said term of ninety-nine years hereinbefore limited or, &c. (*raise arrears of rent-charge, supra*, p. 303). And subject to the foregoing trust shall permit the rents and profits of the said hereditaments to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the said term.

And with respect to the said term of 1000 years hereinbefore limited to the use of the said E. F., G. H., and I. K., their executors, administrators and assigns, IT IS hereby AGREED AND DECLARED as follows :—

Charge of  
portions.

4. THE hereditaments comprised in the said term of 1000 years shall be charged, &c. (*with £15,000 for portions, definition of younger children, proviso reducing the amount charged in the event of there being only one, two, or three younger children, as in last Precedent, Art. 5, p. 303, 304, substituting in the definition of younger children, the words "expectant on the decease of the survivor of the said W. B. and A. B." for the words "expectant on the decease of the said A. B.).*

5. (*Same as last Precedent, Art. 6, p. 305).*

Trustees to  
raise por-  
tions, and  
time of  
payment.

6. THE trustees or trustee of these presents shall, by mortgage of the said hereditaments, &c. (*Trustees to raise portions as to sons at twenty-one as to daughters at twenty-one or marriage if the said W. B. and A. B. shall be both dead, but if they or either of them shall be then living, the raising and payment thereof shall be postponed until the decease of the survivor of them, unless they or the survivor of them shall by writing direct the same to be raised earlier: AND if, &c., remaining part of clause as in last precedent Art. 7, supra, p. 306).*

7. Trusts to  
raise annual  
sums for  
main-  
tenance.

7. IF at the decease of the survivor of the said W. B. and A. B. any child, &c. (*trust to raise annual sums for maintenance of infant younger children, supra, p. 306).*

8. Power to  
raise half of  
sons' por-  
tions for  
advance-  
ment.

8. IT shall be lawful for the trustees or trustee of these presents, upon the request in writing of the said A. B. during his life, and after his decease at the discretion of the trustees or trustee (but with the consent of the said W. B. if he shall be living) by all, &c. (*to raise moiety of presumptive portions of sons for advancement, supra, p. 306).*

9, 10, 11. (*Trustees to raise money to pay costs, husband to*

*join in mortgages made in his lifetime, and, subject to the above trusts, to permit rents to be received by reversioner, supra, p. 307).*

RE-SETTLEMENT BY  
FATHER AND  
ELDEST SON  
ON  
MARRIAGE.

AND IT is hereby FURTHER AGREED AND DECLARED as follows:—

12. IF the said A. B. shall marry again it shall be lawful for him at any time or times, either before or after each or any such future marriage (but subject to the life estate of the said W. B. and the powers annexed thereto, and also to the said term of one thousand years and the trusts thereof) by any deed, &c. (*to charge with jointure for future wife supra, p. 307*).

12. Power to husband to jointure a future wife and charge with portions for younger children.

AND ALSO by any deed or deeds or by his will to charge the said hereditaments or any part thereof with any sum of money for the portion or portions of his child or children by any such future wife or wives as aforesaid (other than a son who at his birth or during his minority shall be or become an eldest or only son entitled under these presents to the said hereditaments for an estate in tail male in possession or in remainder immediately expectant on the decease of the survivor of the said W. B. and A. B.), but so that the sum to be so charged shall not exceed &c. (*supra p. 307, 308.*)

13. IF the said A. B., &c. (*power to limit terms for securing jointure and portions, supra, p. 308*).

14. IT shall be lawful for every son of the said W. B. (other than the said A. B.) either before or after he shall become entitled under these presents to the possession or receipt of the rents and profits of the hereditaments hereby settled, and either before or after his marriage, by any deed or deeds, or by his will, (but subject and without prejudice to the uses and estates (if any) preceding the use or estate hereby limited to the person making such appointment and to the powers annexed to such preceding uses and estates, and also subject and without prejudice to the uses or estates (if any) which shall or may be limited in exercise of the same powers or any of them) to appoint to any wife of the person for the time being exercising this power for her life, any yearly rent or sum not exceeding the yearly sum of £—— for her jointure, to be charged on and yearly issuing out of the said hereditaments or any part thereof, and to be paid at such times and in such manner as to the person exercising this power shall seem meet, and with such powers and remedies for enforcing payment thereof by distress and entry upon and perception of the rents and profits of the said hereditaments as the person

14. Power to tenants for life (other than father and intended husband) to jointure.

RE-SETTLEMENT BY  
FATHER AND  
ELDEST SON  
ON  
MARRIAGE.

Proviso that  
no jointure  
shall take  
effect until  
determina-  
tion of  
estates pre-  
ceding a  
rule of  
appointor.

Proviso  
limiting  
total  
amount of  
jointures.

15. Power to  
same  
tenants for  
life to  
charge  
with por-  
tions for  
younger  
children.

for the time being exercising this power shall think fit: PROVIDED ALWAYS that if any tenant for life under these presents shall exercise the power hereinbefore contained of appointing a rent-charge to his wife before he shall under these presents become entitled to the possession or receipt of the rents and profits of the said hereditaments, then and in every such case the rent-charge to be so appointed as aforesaid shall not take effect in possession or charge the hereditaments expressed to be charged therewith or be payable unless and until the person appointing the same as aforesaid shall under these presents become entitled to the possession or receipt of the rents and profits of the same hereditaments, or if he shall die previously thereto, then unless and until he would in consequence of the determination of the uses or estates preceding the use or estate hereby limited to him have become (if living) entitled to the possession or receipt of the rents and profits of the same hereditaments at any time during the life of his wife, to or for whom such rent-charge shall be so appointed as aforesaid: PROVIDED ALSO that the said hereditaments shall not under the exercise of the aforesaid powers be at any one time subject or liable to the payment of rent charges exceeding in the whole (with the said annual sum or yearly rent-charge of £— hereinafter limited to the said C. D. or to any future wife of the said A. B., if the same shall for the time being be subsisting) the yearly sum of £—, so that if the said hereditaments or any part or parts thereof, would, in case this present proviso had not been inserted, be charged with a greater yearly sum in the whole than the said sum of £—, the payment of the sum occasioning such excess or such part thereof as shall occasion the same shall, during the time of such excess, be suspended.

15. It shall be lawful for every son of the said W. B. (other than the said A. B.), either before or after he shall under these presents be in the actual possession or receipt of the rents and profits of the said hereditaments and either before or after his marriage, by any deed or deeds, or by his will, (but subject and without prejudice to the uses and estates (if any) preceding the use or estate hereby limited to him and to the powers annexed to such preceding uses or estates, and also subject and without prejudice to the uses or estates (if any) to be limited in execution of the same powers or any of them) to charge the said hereditaments or any part thereof with any sum of money for the portion or portions of the younger child or

children of the person for the time being exercising this power (as the expression "younger child or children" is hereinafter defined), not exceeding for one child £5000, for two children between them £8000, for three children between them £12,000, or for four or more children between them £15,000, to be paid to such child or children at such age or time ages or times not being earlier as to any son than his age of twenty-one years, except by way of advancement under any power to be conferred for that purpose as hereinafter is mentioned, nor as to any daughter than her age of twenty-one years or day of marriage, in such shares if more than one, and in such manner as the person for the time being exercising this power shall direct or appoint: PROVIDED ALSO, that if any tenant for life shall exercise the power of charging with portions hereinbefore contained before he shall become entitled to the possession or receipt of the rents and profits of the said hereditaments, then and in every such case the sum of money to be charged for a portion or portions under such exercise of the same power shall not be a lien or charge upon the hereditaments expressed to be charged with the same respectively, nor become vested in or payable, nor carry interest unless and until the person so charging the same hereditaments with a portion or portions as aforesaid, or some issue of his shall, under or by virtue of these presents, become entitled to the actual possession or receipt of the rents and profits of the same hereditaments: PROVIDED ALSO that the said hereditaments shall not under the power of charging with portions hereinbefore contained be made subject or liable to the payment of any sum or sums of money exceeding in the whole (inclusive of the sum of money hereby charged for the portions of the younger children of the said A. B., by the said C. D., or which may be charged for the portions of his children by a future wife under the foregoing power in that behalf) the principal sum of £—— in the whole, and moneys to be charged for portions as aforesaid shall have precedence according to the priority in order of limitation of the estates of the several persons exercising this power.

RE-SETTLEMENT BY FATHER AND ELDEST SON ON MARRIAGE.

Proviso that no portion shall be a lien until the determination of estates preceding the estate of the appointor.

Proviso limiting what amount portions.

16. IF any tenant for life shall exercise the powers of charging in favour of a wife and younger children hereinbefore conferred on him or either of such powers, it shall be lawful for him by the same or any other deed or by his will to limit and appoint the hereditaments comprised in such charge, either to the trustees or trustee of these presents or to any other trustee

16. Power to same tenants for life to limit terms for securing jointure and portions.



RE-SETTLEMENT BY  
FATHER AND  
ELDEST SON  
ON  
MARRIAGE.

or trustees for any term or terms of years without impeachment of waste, UPON SUCH TRUSTS for better securing the payment of the yearly rent-charge to be appointed to a wife as aforesaid, and for raising the money to be charged for the portions of any younger children as aforesaid, together with the costs and expenses of and incidental to the execution of such trusts as the person for the time being exercising this power shall think fit: AND the person exercising this power may, in and by such appointment, direct or authorize the trustees or trustee of the term to be thereby created during the minority of any child who, if of full age, would be entitled in possession to a portion under such appointment to raise out of the rents and profits of the hereditaments comprised in the same term or otherwise, such annual sum as the person exercising this power shall direct, or as the said trustees or trustee shall think fit, not exceeding what interest on the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and to apply the same for the maintenance and education of such minor, with liberty for the said trustees or trustee to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: AND the person for the time being exercising this power may also, if he thinks fit, by any such appointment as aforesaid, authorize the said trustees or trustee to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son under such appointment, and to apply the same for the advancement, preferment, or benefit of such son.

17. Definition of term  
"younger children."

17. THE expression "younger child" or "younger children" hereinbefore used with reference to the power of charging with portions shall be construed to mean and include every daughter of the person for the time being exercising the said power (hereinafter in this article called "the appointor"), and also every son not being at his birth or becoming during his minority an eldest or only son entitled to the hereditaments hereby settled for an estate in tail male in possession, or in remainder immediately expectant on the life estate of the appointor, or on some estate prior in order of limitation to such life estate; and also, (if the appointor shall so declare by deed or will but not otherwise), any son who being an eldest or only son entitled in remainder as aforesaid when he attains the age of twenty-one years shall afterwards die before his estate tail falls into

possession, without having disentailed the said hereditaments or any part thereof with the consent of the protector of the settlement (a).

18. IF and whenever any person for the time being entitled in possession under these presents to the hereditaments hereby settled as tenant for life or tenant in tail by purchase, shall be under the age of twenty-one years, the trustees or trustee of these presents shall (*Trust to manage during minority, supra*, p. 309).

RE-SETTLEMENT BY FATHER AND ELDEST SON ON MARRIAGE.

18. Trustees to manage during minority of tenants in tail.

19 to 23. IT shall be lawful for every person hereby made tenant for life of the hereditaments hereby settled as and when by virtue of these presents he shall be entitled to the possession or to the receipt of the rents and profits of the said hereditaments and also for the trustees or trustee of these presents during the minority of any person for the time being entitled under these presents to the possession or receipt of the rents and profits of the said hereditaments as tenant for life or tenant in tail by purchase by any deed or deeds to appoint, &c. (*Powers to lease, &c., and other provisions, as in Precedent No. XXVIII, Articles 16 to 20, supra*, pp. 310 to 314).

Power to tenants for life, &c., to lease.

24. IT shall be lawful for the trustees or trustee of these presents upon the request in writing of any person for the time being entitled under these presents to the actual possession or receipt of the rents and profits of the hereditaments hereby settled as tenant for life if such person shall be of full age, and during the minority of any person for the time being entitled under these presents to the possession or receipt of the rents and profits of the said hereditaments as tenant for life or tenant in tail by purchase at the discretion of the said trustees or trustee, to expend any sum or sums of money in the improvement, &c. (*As in Article 21 of Precedent No. XXVIII, supra*, p. 314).

24. Power to expend money in improvements.

(a) See p. 303, *supra*, note. In that note it is submitted that it is right to exclude from a portion the representatives of an eldest or only son, who dies before his estate tail falls into possession, on the ground that such son when he attains twenty-one may, with the concurrence of his father, bar the entail and provide for his family, and that it is not to be presumed that the father will refuse such concurrence without sufficient reason. But this argument is not conclusive when applied to a set of limitations such as those in the above precedent. The tenant for life for the time being may happen to be the uncle, and not the father, of the first tenant in tail, and in such a case it is not impossible that he may withhold his consent to a re-settlement of the estates on his nephew coming of age, and thus deprive the latter of the opportunity of making a provision for his wife and younger children. To meet this possibility the appointor is enabled, if he thinks fit, to let in an eldest son dying before his estate tail falls into possession, and without having disentailed.

RE-SETTLEMENT BY FATHER AND ELDEST SON ON MARRIAGE.

25. Power of sale, &c.

26. Trustees to lay out sale moneys in the purchase of other hereditaments.

25. IT shall be lawful for the trustees or trustee of these presents upon the request, &c. (*As in last Article*), to sell, &c. (*Powers to sell and exchange, enfranchise copyholds, make partitions, and revoke and declare new uses. Precedent No. XXVIII., Article 22, supra, p. 315*).

26. THE trustees or trustee of these presents shall receive the moneys to arise from any such sale or exchange [enfranchisement or partition] as aforesaid and may apply the same or any part thereof in or towards satisfaction of any principal sum or sums of money for the time being charged on the hereditaments subject to the uses of this settlement, or for any purpose for which money is in and by these presents authorised to be raised by mortgage of the hereditaments hereby settled or any part thereof, and if and so far as the money shall not be applied in manner aforesaid, the trustees or trustee shall invest the same in the purchase of other hereditaments to be situate in England or Wales being freehold or copyhold of inheritance or leasehold convenient to be held with the hereditaments for the time being subject to the uses of this settlement with liberty to make any such purchase subject to special conditions as to title or otherwise yet so that during the life of any adult tenant for life in possession under these presents such purchase shall be made with his consent in writing, and the said trustees or trustee shall settle, &c. (*lands purchased to be settled to same uses, &c., as in Precedent No. XXVIII., Article 23, supra, p. 316*).

27, 28, 29. (*Same as Articles 24, 25, 26 in Precedent No. XXVIII., supra, p. 317*).

30. Trustees to invest moneys until purchase, and pay income to persons entitled to rents of hereditaments to be purchased.

30. THE trustees or trustee of these presents may postpone the investment in the purchase of hereditaments of the moneys to arise from any such sale or exchange [enfranchisement or partition] as aforesaid for so long as they or he shall think fit, and in the meantime may invest the same moneys in their or his names or name in any of the modes of investment herein-after authorised, and may vary the said investments from time to time into or for others of the same or a like nature, but so that every investment or variation of investment made during the life of any person entitled for the time being to the hereditaments hereby settled as tenant for life in possession and who shall be of full age shall be with his consent in writing, and the income arising from such investment shall be paid and applied to the person or persons and in the manner to whom and in which the rents and profits of the hereditaments to be

purchased therewith would be payable or applicable in case such purchase or purchases and settlement as aforesaid were then actually made.

RE-SETTLEMENT BY FATHER AND ELDEST SON ON MARRIAGE.

31, 32, 33. (*Same as Articles 28, 29, 30, in Precedent No. XXVIII, supra, p. 318, 319.*)

34. THE power of appointing new trustees conferred by statute shall for the purposes of these presents be vested in the said W. B. and A. B, during their joint lives, and in the survivor of them during his life: AND upon, &c. (*Number of trustees may be altered, &c., supra, p. 319.*)

34. Appointment of new trustees.

35. THE powers of leasing and sale and exchange and for the appointment of new trustees contained in the hereinbefore recited indenture of settlement of the — day of —, shall remain in full force during the life of the said W. B., and may be exercised so as to override the uses, powers and provisions limited and declared by and in these presents, and any hereditaments purchased or received in exchange under any exercise of such powers shall be settled to the uses which shall be then subsisting in the hereditaments hereby settled under the joint operation of the said indenture of settlement and these presents.

35. Power of leasing and sale and exchange contained in existing settlements to remain in force.

36. THE said W. B. as to his life estate, and the said A. B. as to the inheritance in fee simple expectant on such life estate do hereby for themselves respectively and their respective heirs, executors and administrators covenant with the said E. F., G. H., and I. K., and their heirs, that notwithstanding any act, deed or thing by the said W. B. and A. B., or any of their ancestors, done or knowingly suffered to the contrary, they the said W. B. and A. B. now have good right to appoint the hereditaments hereby settled to the uses and in manner aforesaid: AND that the said hereditaments shall at all times after the said intended marriage go, remain, and be to the uses aforesaid, and the rents and profits thereof received and taken accordingly, without any lawful let, suit, eviction, claim or demand whatsoever from or by the said W. B. and A. B. respectively, or any person or persons lawfully or equitably claiming from under or in trust for them or either of them, or from or under any of their ancestors: AND that free from all incumbrances whatsoever made, occasioned or suffered by the said W. B. or A. B., or either of them or any of their ancestors, or any person or persons lawfully or equitably claiming as aforesaid: AND that they the said W. B. and A. B. respectively, and all persons having or lawfully or

36. Covenants or title.

RE-SETTLEMENT BY  
FATHER AND  
ELDEST SON  
ON  
MARRIAGE.

equitably claiming any estate or interest in the said hereditaments or any part thereof from, under, or in trust for them or either of them, or from or under any of their ancestors, shall and will, &c. (*For further assurance, supra*, p. 320).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

### No. XXX.

CONVEYANCE  
TO SECURE  
JOINTURE.

CONVEYANCE *by intended HUSBAND of FREEHOLD and LEASEHOLD estates, to secure a JOINTURE to intended WIFE, with usual TRUSTS and POWERS; PROVISIO enabling the SETTLOR to SUBSTITUTE other LANDS as a security for Jointure.*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part: WHEREAS a marriage is intended shortly to be solemnised between the said A. B. and the said C. D.: AND WHEREAS the said A. B. is seised of the freehold hereditaments intended to be hereby granted for an estate of inheritance in fee simple, and he is also entitled to the leasehold hereditaments intended to be hereby demised for the residue of a term of one thousand years created therein by an indenture dated, &c.: AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said A. B. should provide for the said C. D., in case the said intended marriage should take effect and she should survive him, one annual sum or clear yearly rent-charge of £— by way of jointure, and that the same should be charged and secured upon the said freehold and leasehold hereditaments, in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH as follows:—

Recite that marriage is intended.

That intended husband is entitled to freeholds and leaseholds.

Agreement to provide jointure.

Witnessing part.

1. Husband grants freeholds.

1. IN consideration of the said intended marriage, the said A. B. doth hereby grant unto the said E. F. and G. H., and their heirs (*Parcels—General words,—And all the estate, &c.*): To HOLD the same unto the said E. F. and G. H., and their heirs, To THE USE of the said A. B., his heirs and assigns, until

To use of husband

the said intended marriage shall be solemnised: AND FROM and after the solemnisation thereof, TO THE USE of the said A. B. and his assigns during his life, without impeachment of waste: AND from and after his decease, TO THE USE and intent that, &c. (use that C. D. shall take thereout a jointure, with usual powers and remedies, *supra*, pp. 300, 301): AND subject to and charged with the said annual sum or rent-charge, and the said powers and remedies for enforcing payment thereof, TO THE USE of the said E. F. and G. H., their executors, administrators, and assigns, for the term of ninety-nine years, computed from the day of the decease of the said A. B., without impeachment of waste, UPON THE TRUSTS hereinafter declared concerning the same: AND FROM AND AFTER the expiration of the said term of ninety-nine years, and in the meantime subject thereto and to the trusts thereof, TO THE USE of the said A. B., his heirs and assigns for ever.

CONVEYANCE  
TO SECURE  
JOINTURE.

until  
marriage,  
and after  
marriage to  
use of  
husband for  
life;

and after  
his decease  
to the use  
that wife  
shall take  
jointure  
with usual  
powers,  
and subject  
thereto to  
use of  
trustee for  
term.

With  
remainder  
to the use of  
husband in  
fee.

2. THE said term of ninety-nine years is hereinbefore limited to the said E. F. and G. H., their executors, administrators, and assigns, UPON TRUST, that if the said annual sum or yearly rent-charge of £——, hereinbefore limited to the said C. D. for her jointure, or any part thereof, shall, at any time or times be in arrear, &c. (*trust to raise arrears of jointure, supra*, p. 303, *mutatis mutandis*): AND subject to the foregoing trusts shall permit the rents and profits of the said hereditaments or such part thereof as shall not from time to time be required for the purposes of the said trusts, to be received by the said A. B., his heirs and assigns.

3. THE said A. B. doth hereby demise unto the said E. F. and G. H., their executors, administrators, and assigns: ALL &c. (*Leasehold parcels—General words*): TO HOLD the same unto the said E. F. and G. H., their executors, administrators, and assigns, for the term of ninety-nine years, computed from the day of the decease of the said A. B., if the said C. D. shall survive the said A. B.: UPON TRUST to permit and suffer, or authorise and empower the said C. D. and her assigns to have, use, and exercise the like powers and remedies by entry and distress upon and perception of the rents and profits of the said leasehold hereditaments and premises for enforcing payment of the annual sum or yearly rent-charge of £—— hereinbefore limited in use to the said C. D. and her assigns as aforesaid when in arrear, as are hereinbefore limited to her and them, for enforcing payment of the said annual sum or yearly rent-charge

3. Husband  
demises  
leaseholds  
to trustees  
for term,

upon trusts  
to secure  
jointure.

CONVEYANCE  
TO SECURE  
JOINTURE.

4. Power to  
lease.

Power to  
husband to  
substitute  
other lands  
or stock as a  
security for  
jointure

6. Trusts of  
stock, &c.,  
to be pur-  
chased as  
security for  
jointure.

when in arrear out of or upon the same freehold hereditaments and premises hereby granted, or expressed so to be: AND subject thereto, UPON THE SAME or the like trusts as are hereinbefore declared concerning the said term of ninety-nine years hereinbefore limited in use in the said freehold hereditaments.

4. IT shall be lawful for the said A. B. at any time or times during the joint lives of himself and the said C. D. (*power to lease for twenty-one years, supra*, p. 310).

5. IF the said A. B. shall at any time hereafter make other provision for securing the said annual sum of £—— to the said C. D. to the satisfaction of the trustees or trustee of these presents, either by settling other freehold, copyhold, or leasehold hereditaments of sufficient value to the uses, upon the trusts, and with and subject to the powers and provisions hereinbefore limited, declared, and contained concerning the said freehold and leasehold hereditaments respectively hereby granted and demised, or by investing in the names or name of the said trustees or trustee, in or upon any stocks, funds, or securities authorised by law as investments for trust-moneys such a sum of money as will, when so invested, provide by the income thereof a clear annual sum of £——, to be held by the said trustees or trustee upon the trusts hereinafter declared concerning the same, then and in either of the said cases the said annual sum or yearly rent-charge of £——, and the powers and remedies and terms of ninety-nine years and ninety-nine years respectively hereinbefore limited and created for securing the same shall cease and be absolutely void.

6. THE trustees or trustee for the time being of these presents shall stand possessed of any stocks, funds, or securities which may be invested in their or his names or name by the said A. B. as aforesaid upon the trusts following (that is to say): UPON TRUST to pay the income of the said stocks, funds, and securities to the said A. B. during his life, and after his decease, UPON TRUST, in case the said C. D. shall survive the said A. B., to pay with and out of the income of the said stocks, funds, or securities, or if the same shall be insufficient, then out of the principal thereof, an annual sum of £—— to the said C. D. during her life, by equal half-yearly payments, without any deduction except for or in respect of the property or income-tax, and subject to the said annual sum of £——, IN TRUST for the said A. B., his executors, administrators, and assigns, with liberty for the said trustees or trustee for the time being, at the

request in writing of the said A. B. during his life, and after his decease at the discretion of the said trustees or trustee, to vary the said stocks, funds, or securities into or for others of the same or a like nature, and with liberty also for the said trustees or trustee at any time thereafter, in lieu of such stocks, funds or securities, to accept such settlement of freehold or copyhold hereditaments as hereinbefore is mentioned.

CONVEYANCE  
TO SECURE  
JOINTURE.

7. THE statement or certificate in writing of the trustees or trustee for the time being of these presents that the said A. B. has made other provision for securing the payment of the said annual sum of £—— to the said C. D. to the satisfaction of the said trustees or trustee shall be conclusive evidence of the fact so stated, and no person hereafter deriving title to the hereditaments hereby granted and assigned or expressed so to be, or any part thereof, shall be bound or concerned to see that such provision is of the nature and value required by Article 5, or otherwise as to the nature or sufficiency of the same.

7. Certificate  
of trustees  
to be  
sufficient  
evidence of  
due provi-  
sion having  
been made  
for jointure.

8. THE power, &c. (*provision as to appointment of new trustees, supra*, p. 319).

9. (*Covenants for title by A. B.*)

IN WITNESS, &c.

No. XXXI.

SETTLEMENT upon MARRIAGE of tenant for life in possession in exercise of a POWER of JOINTURING and CHARGING with PORTIONS for younger Children.

UNDER  
POWER TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS.

THIS INDENTURE, made the —— day of ——, BETWEEN Parties. A. B. of, &c. (*intended husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part (*Recite settlement under which intended husband has a power to charge the settled estates with a jointure in favour of wife, and with portions for younger children*): AND WHEREAS some of the hereditaments comprised in the said indenture of settlement have been sold under a power of sale therein contained, and other hereditaments have been purchased with the proceeds of such sale

Recital of  
settlement  
and that  
some of  
the settled  
lands have  
been sold,  
and other  
lands pur-  
chased.



UNDER  
POWER TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS.

Recital of  
intended  
marriage.  
Agreement  
to exercise  
powers.

Witnessing  
part.

1. Husband  
appoints  
jointure to  
wife.

2. Husband  
charges  
with por-  
tions for  
younger  
children.

4. Time of  
payment.

and have been settled to the uses of the said indenture: AND whereas the hereditaments now subject to the uses of the said indenture are hereinafter called the "settled hereditaments:" AND WHEREAS a marriage is intended shortly to be solemnized between the said A. B. and the said C. D.: AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said A. B. should exercise in favour of the said C. D. and the issue (if any) of the now intended marriage, in the manner hereinafter expressed, the powers of jointuring and charging with portions so as aforesaid vested in him by the said indenture of settlement: NOW THIS INDENTURE, made in consideration of the said intended marriage, WITNESSETH as follows:

1. THE said A. B. in exercise of the power for this purpose given to him by the said indenture of settlement as aforesaid, and of all other powers (if any) him hereunto enabling, DOETH hereby appoint that the said C. D., if she shall survive the said A. B., shall receive during her life the yearly rent or sum of £—— for her jointure, and in bar of all dower and freebench, to be charged upon and issuing out of the settled hereditaments, and to be paid by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first payment of a proportionate part of the said rent-charge to be made on such of the days as shall first happen after the decease of the said A. B.: AND that, if the said annual sum, &c. (*powers of distress and entry, supra*, p. 300.)

2. THE said A. B. in exercise of the power for this purpose given to him by the said indenture of settlement as aforesaid and of all other powers (if any) him hereunto enabling doth hereby appoint that the settled hereditaments shall be charged, &c. (*charge of £15,000 for portions, definition of younger children, and proviso for reducing amount charged in the event of there being only one, two or three younger children, as in Precedent No. XXVIII., Art. 5, supra*, pp. 303, 304, *substituting the words*: "the said indenture of settlement" for "these presents," *and the words* "the settled hereditaments" for "the hereditaments hereby settled.")

3. (*If two or more younger children, sum charged to be divided, &c., as in Precedent No. XXVIII., Art. 6, supra*, p. 305.)

4. THE portion of each child being a son shall be payable, &c. (*time for payment of portions, supra*, p. 306).

5. THE said A. B. in exercise of the power for this purpose given to him by the said indenture of settlement and of all other powers (if any) him hereunto enabling doth hereby appoint the settled hereditaments unto the said E. F. and G. H., their executors, administrators and assigns for the term of 1000 years computed from the decease of the said A. B. without impeachment of waste: UPON the trusts hereinafter declared concerning the same.

UNDER  
POWER TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS.

5. Husband  
appoints  
settled here-  
ditaments  
to trustees  
for term.

6. IF the yearly rentcharge hereinbefore limited to the said C. D. for her jointure or any part thereof shall be in arrear for the space of sixty days after any of the days hereby appointed for payment thereof, then and in such case the said E. F. and G. H. or the survivor of them, or the executors or administrators of such survivor (hereinafter called "the trustees or trustee of these presents") shall, &c. (*trust to raise jointure, supra, p. 303.*)

6. Trust to  
raise  
jointure.

7. THE trustees or trustee of these presents shall by mortgage of the settled hereditaments or any part thereof for all or any part of the said term, or by any other reasonable ways or means raise the sum or sums of money which by virtue of the foregoing charge shall become payable for a portion or portions as aforesaid at the time or respective times when the same shall become payable, and shall pay and apply the moneys to be so raised in payment of such portion or portions accordingly.

7. Trust to  
raise por-  
tions.

8 to 12. (*Trust to raise annual sums for maintenance, power of advancement, and to raise costs and expenses, husband to join in mortgages, and trust to permit rents to be received by reversioner, as in Precedent No. XXVIII., Articles 8 to 12, supra, pp. 306, 307.*)

13. THE said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors, administrators, and assigns, THAT notwithstanding any act, deed, or thing by him the said A. B. done or executed, or knowingly or willingly suffered to the contrary, he the said A. B. now hath good right to appoint and charge the settled hereditaments in manner aforesaid: AND that he the said A. B., and all persons having or lawfully or equitably claiming any estate or interest in the settled hereditaments from or under him the said A. B., shall and will from time to time, and at all times, at the request of the said E. F. and G. H., their executors, administrators, or assigns, and at the cost of the trust estate, do and execute, or cause to be done and executed, all

Cove-  
nant by  
husband for  
right to  
appoint and  
charge.  
And for  
further  
assurance.

UNDER  
POWER TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS.

Settle-  
ment to be  
void if  
marriage  
not within  
twelve  
months.

such acts, deeds and things, for further and more perfectly appointing and charging the said hereditaments in manner aforesaid, as shall or may be reasonably required.

14. THESE presents shall be void if the said intended marriage is not solemnized within twelve calendar months from the date hereof.

IN WITNESS, &c.

### No. XXXII.

UNDER  
POWER TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS BY  
REMAINDER-  
MAN.

SETTLEMENT *upon* MARRIAGE of a JOINTURE for wife  
and PORTIONS for younger children where SETTLOR  
has an estate in REMAINDER only.

THIS INDENTURE, &c. (*Parties and recitals as in last pre-  
cent, adding recitals showing what estates prior to the settlor's  
life estate are still subsisting.*)

NOW THIS INDENTURE, made in consideration of the  
said intended marriage, WITNESSETH as follows:—

1. Appoint-  
ment of  
jointure to  
intended  
wife with  
usual power.

1. THE said A. B. in exercise of this power for this purpose given to him by the said indenture of settlement as aforesaid and of all other powers (if any) him hereunto enabling doth hereby appoint that if the said C. D. shall survive the said A. B. and the estates for life and in tail limited by the said indenture of settlement and having precedence over the estate for life thereby limited to the said A. B. shall fail or determine in the lifetime of the said C. D., then and in such case the said C. D. and his assigns shall and may from and after the death of the said A. B. or the failure or determination of the said preceding estates (which shall last happen) receive during his life the annual sum or yearly rent-charge of £—— for her jointure and in lieu of all dower and freebench to be charged upon and issuing out of the settled hereditaments and to be paid by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first payment of a proportionate part of the said annual sum or yearly rent-charge to be made on such of the said days as shall first happen

after the time hereby appointed for the commencement of the said rent-charge, and that, if, &c. (*powers of distress and entry supra*, p. 300.)

UNDER  
POWER TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS BY  
REMAINDER-  
MAN.

2. THE said A. B. in exercise of the power for this purpose given to him by the said indenture of settlement and of all other powers (if any) him hereunto enabling doth hereby appoint that subject to the uses and estates limited by the said indenture of settlement and preceding his estate for life, and subject also to the said yearly rentcharge hereinbefore limited, the settled hereditaments shall be charged with, &c. (*charge with £15,000 for portions, supra*, p. 303): AND for this purpose the expression "younger children" shall be construed to mean and include every daughter of the said intended marriage, and also every son not being at his birth or becoming during his minority an eldest or only son entitled under the said indenture of settlement to the settled hereditaments for an estate in tail male in possession or in remainder immediately expectant on the life estate of the said A. B., or on some estate prior in order of limitation to such life estate, and also any son who being an eldest or only son entitled in remainder as aforesaid when he attains the age of twenty-one years, shall die before his estate tail falls into possession without having disentailed the said hereditaments or any part thereof, with the consent of the protector of the settlement: (a) PROVIDED ALWAYS, &c. (*proviso reducing amount charged in the event of there being only one, two, or three younger children, supra*, p. 304).

2. Husband  
charges  
settled  
heredita-  
ments with  
portions.

3. (*If two or more younger children, sum charged to be divided, &c., supra*, p. 305.)

4. THE portion of every child under the foregoing charge shall be payable to such child, being a son, at his age of twenty-one years, or being a daughter, at her age of twenty-one years or day of marriage (which shall first happen), if the said A. B. shall be then dead, and all estates for life and in tail limited by the said indenture of settlement, and having precedence over the life estate of the said A. B. shall then have determined, but if the said A. B. shall be then living, or any of such preceding estates shall be then subsisting, the payment of such portion shall be postponed until the decease of the said A. B., and the determination of all the preceding estates, unless the said A. B. (if living) and all persons (if any) entitled to the preceding estates shall direct the same to be raised and paid earlier: AND

Time for  
payment  
portions.

(a) See p. 331, *supra*, note.

UNDER  
POWER TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS BY  
REMAINDER-  
MAN.

if any child after the time hereby appointed for payment of his or her portion shall become entitled to a further portion by reason of the death of a brother or unmarried sister under the age of twenty-one years, such further portion shall be payable at the time of the accruer thereof: AND every portion shall bear interest after the rate of £4 per cent. per annum from the time when the same shall become payable.

Appoint-  
ment of  
settled  
heredita-  
ments to  
trustees for  
a term.

5. THE said A. B. in exercise of the power for this purpose given to him by the said indenture of settlement, and of all other powers (if any) him hereunto enabling doth hereby appoint that (subject and without prejudice to the uses and estates limited by the said indenture of settlement, and preceding the estate for life thereby limited to the said A. B., and subject to the said yearly rentcharge of £— hereinbefore limited, and the powers and remedies for enforcing payment thereof) the settled hereditaments shall go, remain, and be to the use of the said E. F. and G. H., their executors, administrators, and assigns for the term of 1000 years computed from the decease of the said A. B., and so that the said term shall follow in order of limitation the life estate of the said A. B., UPON the trusts hereinafter declared concerning the same.

Trusts to  
secure  
jointure.

6. IF the said yearly rent-charge of £— hereinbefore limited to the said C. D. shall become payable, and the same or any part thereof shall be in arrear, &c., then and so often as the same shall happen the said E. F. and G. H. or the survivor of them or the executors or administrators of such survivor (hereinafter called "the trustees or trustee of these presents") shall, &c. (*trusts to secure jointure, supra, p. 303.*)

7. THE trustees or trustee of these presents shall by mortgage, &c. (*raise portions, supra, p. 339.*)

Trust to  
raise annual  
sum for  
mainte-  
nance.

8. IF at the decease of the said A. B., or the failure or determination of the estates for life and in tail preceding the estate for life of the said A. B. under the said indenture of settlement (which shall last happen), any child, &c. (*Trust to raise annual sums for maintenance of infant younger children, &c., supra, p. 306.*)

9 to 12. *Power of trustees to raise moiety of presumptive portions of sons for advancement; husband to join in mortgages made in his lifetime. Subject to trusts, rents of settled property to go to reversioner, as in Precedent No. XXVIII., supra, pp. 306, 307).*

13, 14. (*Covenants by husband for title and settlement to be void if marriage not within twelve months, as in last Precedent, supra*, pp. 339, 340).

IN WITNESS, &c.

UNDER  
POWER TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS BY  
REMAINDER-  
MAN.

---

No. XXXIII.

TRANSFER *by a REGISTERED PROPRIETOR of FREEHOLD LAND in order to constitute the TRANSFEROR and THREE OTHER PERSONS registered Proprietors with a view to the SETTLEMENT made by the next PRECEDENT.*

No.

THE LAND TRANSFER ACT, 1875.

Office of Land Registry.

I, A. B., of, &c. (*transferor*), the registered proprietor of the freehold land entered in the register under the above number in consideration of a marriage about to be solemnised between me and C. D., of, &c. (*wife*), transfer such land to the said A. B. and E. F., of, &c., G. H., of, &c., and I. K., of, &c. (*trustees*).

Dated this      day of      .

(Signed) A. B.

Witness

X. Y., a Solicitor.

## No. XXXIV.

BY A  
REGISTERED  
PROPRIETOR.

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SETTLEMENT of REAL ESTATE by a REGISTERED PROPRIETOR (a) containing similar PROVISIONS to Precedent No. XXVIII., the fee simple of the LAND having been TRANSFERRED to the TRUSTEES jointly with the SETTLOR by a separate instrument so as to constitute them REGISTERED PROPRIETORS pursuant to the LAND TRANSFER ACT, 1875.

Parties.

THIS INDENTURE made the — day of —, BETWEEN A. B. of, &c. (*husband*), of the first part, C. D. of, &c. (*intended wife*), of the second part, E. F. of, &c., G. H. of, &c., and I. K., of, &c. (*trustees*), of the third part, and X. Y., of, &c., of the fourth part: WHEREAS a marriage, &c. (*recital of intended marriage*): AND WHEREAS upon the treaty for the said intended marriage it was agreed that the said A. B., being the registered proprietor of the hereditaments described in the schedule hereto, should settle the same upon the trusts and in the manner hereinafter expressed: AND he has accordingly by an instrument bearing even date with these presents in the manner prescribed by the Land Transfer Act, 1875, and the rules made in pursuance thereof, transferred the said hereditaments unto the said A. B., E. F., G. H., and I. K., to the intent

Recital of  
agreement  
for settle-  
ment.

(a) In order to make this collection of precedents complete, a form of strict settlement by a registered proprietor is here given, but the fact that a registered proprietor cannot make an effectual settlement of real estate except through the intervention of trustees, is one of the reasons which is likely to prevent an owner of a family estate from availing himself of the Land Transfer Act. At present, according to the usual form of a strict settlement, the trustees take no estate in the freehold, but have merely powers enabling them to intervene at the request of the settlor, or during the minority of a tenant in tail, or on other occasions when the exigencies of the settlement require it. Where, however, land is registered, it will probably be thought necessary, for the protection of the interests created by the settlement, that he should constitute the trustees registered proprietors, either alone or jointly with himself. In the form given above it is supposed that the settlor and trustees are constituted registered proprietors, for which purpose they must be clothed with the legal estate in fee simple as joint tenants. They then by a separate deed (which will not be registered) convey the property to a grantee to uses, to the use of the settlor during his life with remainder to the use of the trustees in fee simple upon trusts creating equitable estates tail and for securing a jointure and portions for younger children, with the usual powers of sale, &c. The effect of such a deed will be to make the settlor legal tenant for life, and thus enable him to grant leases which will be effectual in law. All other dealings with the land will have to be by the trustees with his concurrence.

that they shall as soon as conveniently can be after the said intended marriage, cause themselves to be entered on the register as the proprietors thereof: AND it is intended that an entry shall be made on the register to the effect that when the number of registered proprietors shall be reduced below two no registered disposition shall be made except under the order of the Court (b): NOW THIS INDENTURE made in consideration of the said intended marriage WITNESSETH and DECLARES as follows:—

1. THE said A. B., E. F., G. H., and I. K., do hereby grant unto the said X. Y. and his heirs, *all, &c.* (*parcels, general words, and all the estate, &c.*), To hold the hereditaments and premises hereby granted or expressed so to be (hereinafter called the hereditaments hereby settled) unto the said X. Y. and his heirs: TO THE USE of the said A. B. and his assigns during his life, without impeachment of waste, and after his decease TO THE USE of the said E. F., G. H., and I. K., their heirs and assigns, UPON TRUST in the first place for securing in the manner hereinafter mentioned the payment of the several annual and gross sums of money hereinafter charged on the said hereditaments as and when the same respectively shall become payable: AND subject thereto, IN TRUST for the first and other sons of the said A. B. by the said C. D. severally, successively, and in remainder, one after another, according to seniority of age, and the heirs male of their respective bodies, the elder of such sons and the heirs male of his body being always preferred to the younger of such sons, and the heirs male of his and their body and respective bodies: AND in default of such issue, IN TRUST for the said A. B., his heirs and assigns for ever.

BY A  
REGISTERED  
PROPRIETOR.

1. Conveyance by registered proprietors to use of settlor for life with remainder to the use of the trustees in fee simple.

In trust to secure annual and gross sums charged thereon and subject thereto first and other sons of the marriage in tail male remainder to husband in fee.

2. IF the said C. D. shall survive the said A. B., the said E. F., G. H., and I. K., or the survivors or survivor of them, or the heirs of such survivor (hereinafter called "the trustees or trustee of these presents") shall, out of the rents and profits of the hereditaments hereby settled, pay to the said C. D. during her life for her jointure, and in lieu of all dower and freebench, the annual sum of £—, by equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, the first payment of a proportionate part thereof to be made on such of the said days as shall first happen after the decease of the said A. B.

2. Trust to pay jointure to wife if she survives settlor.

(b) See 38 & 39 Vict. c. 87, sect. 83, sub-sect. 3.



BY A  
REGISTERED  
PROPRIETOR.

3, 4, 5. THE hereditaments hereby settled shall be charged, &c. (*charge of portions, sum charged to be divided between two or more children, &c., time for payment of portions, supra, p. 304 to 306.*)

6. Trust to  
raise por-  
tions by  
mortgage.

6. THE trustees or trustee of these presents shall by mortgage of the said hereditaments or a competent part thereof, or by any other reasonable ways and means, raise the sum or sums of money (if any) which shall become payable for the portion or portions of the younger child or younger children of the said intended marriage at the time or respective times hereinbefore appointed for payment thereof respectively, except so far as any part thereof shall have been previously raised under the power of advancement hereinafter contained.

7. Trust to  
raise annual  
sums for  
main-  
tenance of  
infant  
younger  
children.

7. IF at the decease of the said A. B. any child entitled in expectancy to a portion under the foregoing trust shall be under the age of twenty-one years, the trustees or trustee of these presents shall, with and out of the rents and profits of the said hereditaments, or by any other reasonable ways and means, raise such annual sum for the maintenance and education of each such minor as the said trustees or trustee shall think fit, not exceeding what the interest of the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and shall apply the annual sum to be so raised for the maintenance and education of such minor accordingly, with liberty for the said trustees or trustee to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid. without being liable to see to the application thereof.

8. Power to  
trustees to  
raise moiety  
of presum-  
ptive portions  
of sons for  
advance-  
ment.

8. IT shall be lawful for the trustees or trustee of these presents at any time upon the request of the said A. B. during his life, and after his decease at their or his discretion, to raise by mortgage of the said hereditaments or any part thereof, or by any other reasonable ways or means, any part or parts not exceeding one moiety of the presumptive portion of any son in the sum of money hereinbefore charged for portions, and to apply the same for his advancement, preferment, or benefit in such manner as the said A. B. shall request, or the said trustees or trustee after his decease shall think fit.

9. Power to  
husband to  
charge with  
jointure and  
portions for  
future wife  
and children  
of future  
marriage.

9. IT shall be lawful for the said A. B. if he shall marry again at any time or times either before or after each such future marriage (but subject to the foregoing charge for portions of the younger children of the now intended marriage) by any deed, &c. (*to jointure a future wife and charge with portions*

*for younger children, supra, p. 307*): AND the said A. B. may in and by such appointment direct the trustees or trustee of these presents during the minority, &c. *(to raise annual sum for maintenance of minors entitled to portions in expectancy, and to raise one half of presumptive portions of sons for advancement, supra, pp. 309, 310, mutatis mutandis. Proviso limiting amount raiseable, supra, p. 308.*

BY A  
REGISTERED  
PROPRIETOR.

10. *(Proviso enabling trustees to manage during minority of tenant in tail, supra, p. 309.*

11. *Powers to lease, supra, p. 310, substituting for the words, "to appoint by way of lease" the words "to appoint or demise.")*

12 to 17. *(Power of sale and exchange and auxiliary powers, supra, pp. 315 to 319 omitting the power to revoke uses and limit new uses.)*

18. UPON any lease, sale, mortgage, or other disposition of the hereditaments hereby settled or any of them under the trusts and powers of these presents, the registered proprietors shall make, do, and execute, or cause or allow to be made, done, and executed all such acts, deeds, instruments, and things (including all proper entries in the land registry) as shall be necessary to give effect to such lease, sale, mortgage, or other disposition.

19. *(Investment clause, supra, p. 229).*

20. THE power of appointing new trustees conferred by statute shall for the purposes of these presents be vested in the said A. B. during his life, and upon any appointment under the statutory power the number of trustees may be altered, provided that it be not reduced below two: AND if and whenever the number of trustees shall be reduced to one, a new trustee or new trustees shall be appointed as soon as conveniently can be, but in the meantime all acts done by the sole trustee shall be valid and effectual: AND upon every appointment of new trustees such instruments and things shall be executed and done as will constitute the trustees for the time being (jointly with the said A. B., if living) registered proprietors of the hereditaments subject to this settlement. AND upon every change of the registered proprietorship an entry shall be made on the register to the effect that when the number of registered proprietors shall be reduced below two no registered disposition shall be made except under the order of the Court.

*(Covenants for title by A. B. with X. Y. and his heirs (c)).*

(c) If A. B. is registered proprietor with an absolute title, the covenants for title may be omitted.

## No. XXXV.

POST-NUPTIAL SETTLEMENT *of a sum of Stock*  
*on the WIFE and CHILDREN of the SETTLOR (a).*

POST-  
NUPTIAL  
SETTLEMENT.

Parties.

Recital of  
intention to  
settle.

Witnessing  
part.

1. Trustees  
to retain or  
change  
invest-  
ments.

2. Trusts for  
settlor and  
wife and  
issue.

THIS INDENTURE, made the — day of —, 18—, BETWEEN A. B. of, &c. (*settlor*), of the one part, and C. D. and E. F. of, &c. (*trustees*), of the other part: WHEREAS the said A. B., being desirous of making some provision for his wife and issue, has purchased the sum of £—— £3 per cent. Consolidated Annuities in the names of the said C. D. and E. F., to be held by them upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same: NOW THIS INDENTURE WITNESSETH, that the said A. B., in consideration of his natural love and affection for his wife and issue, DOTH hereby irrevocably direct and declare, and IT IS HEREBY AGREED as follows:—

1. THE said C. D. and E. F. or the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of these presents (hereinafter called “the trustees or trustee”), shall retain the said, &c. (*Trust to retain stock or change investment, supra, p. 202.*)

2. THE trustees or trustee shall pay the income of the trust funds to the said A. B. during his life, and after his death shall pay the said income to X. B., the wife of the said A. B., if she shall survive him: AND from and after the death of the said A. B., and the death or second marriage (which shall first happen) of the said X. B., shall stand possessed of the trusts funds: IN TRUST for all or any one or more of the issue of the said A. B. as well by the said X. B. as by any future wife (such issue being born in the lifetime of the said A. B.), at such ages or times, age or time (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), in such shares, if more than one, and in such manner as the said A. B. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said A. B. as well by the said X. B. as by any future wife, who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, in equal shares; and

(a) As to voluntary settlements, see *supra*, p. 192.

if there shall be only one such child, the whole to go to that one child: But so nevertheless that, &c. (*Hotchpot clause, supra*, p. 202.) And if there shall be no such child, then IN TRUST for the said A. B., his executors, administrators and assigns.

POST-  
NUPTIAL  
SETTLEMENT.

3. NOTWITHSTANDING the foregoing trusts in favour of his issue, the said A. B. may, if he marries again, by deed or will appoint that the whole or any part of the income of the said trust funds shall be paid after his death to his widow during her life, or for any less period.

3. Power to  
settlor to  
appoint life  
interest to a  
future wife.

4. THE trustees or trustee may at any time or times raise any part or parts not exceeding together one moiety of the vested or presumptive share of any child of the said A. B. under these presents, and apply the same for his or her preferment, advancement, or benefit, but so that every such advancement shall be with the consent of the parents or surviving parent of the child, or, if there shall be no surviving parent, at the discretion of the trustees or trustee.

4. Advance-  
ment  
clause.

5. ALL moneys (*Investment clause, supra*, p. 204).

5. Invest-  
ment  
clause.

6. THE power of appointing new trustees conferred by statute shall for the purpose of these presents be vested in the said A. B. during his life, and upon any appointment under the said power, the number of trustees may be altered so that they be not reduced below two.

Appoint-  
ment of new  
trustees  
clause.

IN WITNESS, &c.

## No. XXXVI.

VOLUNTARY SETTLEMENT (a) by a BACHELOR for the benefit of HIMSELF AND HIS ISSUE, with POWER to appoint LIFE INTEREST to any WIFE; POWER OF REVOCATION with the consent of the TRUSTEES.

VOLUNTARY  
SETTLEMENT  
BY A  
BACHELOR.

THIS INDENTURE, made the — day of —, 18—, BETWEEN A. B. of, &c. (*settlor*), of the one part, and C. D. of, &c. and E. F. of, &c. (*trustees*), of the other part (*recite will under which settlor is entitled to a share of the testator's residuary estate, subject to the life interest of the testator's wife*): AND WHEREAS, the said A. B. is desirous of settling his reversionary share under the said will in the manner hereinafter expressed, and the said C. D. and E. F. have at his request agreed to be the trustees of

Parties.

Recital of  
desire to  
make  
settlement.

(a) As to voluntary settlements, see *supra*, p. 192.

VOLUNTARY  
SETTLEMENT  
BY A  
BACHELOR.

1. Settlor  
assigns  
reversionary  
share to  
trustees.

the said intended settlement: NOW THIS INDENTURE  
WITNESSETH as follows:—

1. THE said A. B. doth hereby assign unto the said C. D. and E. F., their executors, administrators, and assigns, ALL, &c. (*describe the settlor's share intended to be settled*): AND ALL the right, &c., together with full power, &c. To HOLD the said reversionary share and premises hereby assigned or expressed so to be (subject to the life interest therein of the said —), with the said C. D. and E. F., their executors, administrators, and assigns: UPON THE TRUSTS and subject to the powers and provisions hereinafter declared and contained.

2. Trust to  
invest.

2. THE said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee of these presents (hereinafter called "the trustees or trustee") shall, &c. (*Trust to require transfer when shares fall into possession, and to invest and vary investment, supra, p. 233*).

3. Trust to  
pay income  
to settlor for  
life with  
power to  
appoint life  
interest to  
a widow for  
life.

3. THE trustees or trustee shall pay the income of the trust funds to the said A. B. during his life, and the said A. B. may by deed or will appoint that after his death the whole or any part of the said income shall be paid to any widow whom he may leave during her life, or for any less period.

4. Trusts for  
children of  
settlor.

4. AFTER the death of the said A. B., and subject to any interest appointed to a widow as aforesaid, the trustees or trustee shall stand possessed of the trust funds, IN TRUST for all or any one or more of the issue of the said A. B. born in his lifetime, at such age or time, ages or times, in such shares, if more than one, and in such manner as the said A. B. shall by deed or will appoint, and in default of any such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children (if any) of the said A. B. who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, in equal shares, and if there shall be only one such child, then the whole to go to such one child: BUT so that no child who or any of whose issue shall take any share under any such appointment as aforesaid, shall take any share in the unappointed part (if any) of the trust funds without bringing the share or shares appointed to him or her or to his or her issue into hotch-pot, and accounting for the same accordingly: AND if there shall be no issue of the said A. B. in whom the trust funds

In default of  
issue for  
brothers and  
sisters, &c.,

shall become absolutely vested under the foregoing trusts, then IN TRUST for such person or persons being a brother or sister, or brothers or sisters, or the issue of a brother or sister or brothers or sisters of the said A. B., and in such manner as the said A. B. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST for the person or persons who, under the statutes for the distribution of the effects of intestates, would have become entitled thereto at the decease of the said A. B. if he had died possessed thereof and intestate.

VOLUNTARY  
SETTLEMENT  
BY A  
BACHELOR.  
of settlor as  
he shall  
appoint, and  
in default of  
appoint-  
ment for his  
next of kin.

5, 6. (*Advancement and investment clauses supra*, pp. 203, 204.)

7. THE power of appointing new trustees conferred by statute shall for the purposes of these presents be vested in the said A. B. during his life.

8. It shall be lawful for the said A. B. at any time or times hereafter, with the consent of the trustees or trustee, by any deed or deeds under the hands and seals of the said A. B. and of the trustees or trustee, to revoke all or any of the trusts declared by these presents of and concerning the trust funds or any part thereof, and to declare any new or other trusts of or concerning the same: AND the trustees or trustee may give or withhold their or his consent to any such revocation and new appointment as aforesaid at their or his absolute discretion, and without being answerable for the exercise of such discretion.

8. Power for  
settlor to  
revoke with  
consent of  
trustees.

IN WITNESS, &c.

### No. XXXVII.

AGREEMENT *in CONTEMPLATION of MARRIAGE*, that a BUSINESS carried on by the INTENDED WIFE SHALL be her separate PROPERTY (a).

AGREEMENT  
THAT  
MARRIED  
WOMAN MAY  
CARRY ON  
BUSINESS.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c., (in-

(a) By the first section of the 33 & 34 Vict. c. 93, the wages and earnings of any married woman, acquired or gained by her after the passing of the Act, in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and all investments of such wages and earnings shall be deemed to be property settled to her separate use; and the 11th section of the same Act provides that a married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by the Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall by writing under his hand have agreed with her shall belong to her after marriage as her separate property.

AGREEMENT  
THAT  
MARRIED  
WOMAN MAY  
CARRY ON  
BUSINESS.

---

*tended husband*), of the one part, and C. D. of, &c. (*intended wife*), of the other part: WHEREAS the said C. D. has for some years past carried on the business of — at —, and the same business is now being carried on by her at the same place: AND WHEREAS a marriage hath been agreed on, and is intended to be shortly solemnised between the said A. B. and the said C. D.: AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said A. B. should execute these presents: NOW THIS INDENTURE WITNESSETH, that in contemplation of the said intended marriage, the said A. B. doth hereby agree with the said C. D., that as well between the date of these presents and the solemnisation of the said intended marriage, as also at all times subsequently to such marriage, the said business shall be carried on by the said C. D. for all purposes separately from the said A. B., and that as well between the date of these presents and the solemnisation of the said intended marriage, as also at all times subsequently to such marriage all the beneficial interest and good will of the said business, and all book and other debts now due and owing, and hereafter to become due and owing to the said business, or to the said C. D. on account thereof, and all securities for the same, and all contracts and engagements, benefits and advantages, which have been entered into or which hereafter shall be entered into with the said C. D., or to which she is or can be entitled in respect of the said business, and all the stock in trade, goods, fixtures, articles, and things which now belong or hereafter shall belong to the said business, or to the said C. D. and on account thereof, or which are or shall be used in the same, and all and singular the present and future earnings, and profits of the said business shall belong to the said C. D. absolutely as her separate property.

IN WITNESS, &c.

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### No. XXXVIII.

AGREEMENT *before marriage that ALL the wife's*  
PROPERTY *present and future shall be for her* SEPA-  
RATE USE.

SEPARATE  
USE.

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Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of — (*intended husband*) of the first part, C. D., of — (*intended wife*) of the second part, and E. F., of —, (a trustee

appointed for this purpose by the said C. D.) of the third part. WITNESSETH that in consideration of a marriage intended shortly to be solemnized between the said A. B. and the said C. D., It is hereby AGREED AND DECLARED BETWEEN and by the parties hereto, that if the said intended marriage shall take effect, all real and personal property of or to which the said C. D. at the time of the said intended marriage or she or the said A. B. in her right at any time or times during the now intended coverture shall be or become entitled for any estate or interest, whether in possession, reversion, or otherwise, shall belong to the said C. D. for her sole and separate use, and be at her absolute disposal as if she were a feme sole. IN WITNESS, &c.

SEPARATE  
USE.

Agreement  
that all  
wife's pre-  
sent and  
after ac-  
quired  
property  
shall be for  
her separate  
use.



## WILLS.

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Charac-  
teristics of  
a will.

THE principal characteristic of a will is, that it is ambulatory and revocable, and has no operation during the life of the testator. The form of the instrument is not of importance, so long as its terms are testamentary (*a*) ; but if the instrument is in the form of a deed, the circumstance of the grantor reserving a life interest to himself, with a general power of revocation, does not make it testamentary (*b*).

Division of  
the subject.

It is proposed in this Dissertation to consider the subject of wills under the following heads :—I. What property can be disposed of by will, who may make a will, how a will must be executed and attested, and what amounts to a revocation of a will. II. As to the time from which a will speaks, what property passes under a general devise or bequest, and what words are sufficient to carry the fee simple. III. In what cases the trustees take the legal estate under a devise, and as to the extent of their estate. IV. Legacies, general and specific, vested and contingent, gifts to children, next of kin, legal representatives, &c. V. Lapse. VI. For what period the vesting of property given by will may be postponed, or income may be accumulated, having regard to the rule against perpetuities and the Thellusson Act. VII. Gifts in mortmain, and particularly gifts to charities. VIII. Conversion. IX. In what cases precatory words create a trust. X. The effect of a charge of debts and the implied power of sale thereby created. The Dissertation will conclude with a brief reference to.—XI. Descent and the mode

(*a*) See Williams on Executors,  
Pt. 1, Bk. ii. c. 2, sec. 3.

(*b*) *Tompson v. Browne*, 3 M. &  
K. 32.

in which the personal estate of an intestate is distributed. And XII. The stamp duties on probates and letters of administration, and under the Legacy and Succession Duty Acts.

I. *What property may be disposed of by will, who may make a will, how a will must be executed and attested, and what is a revocation of a will.* What property may be disposed of by will.

The Act 1 Vict. c. 26 (commonly called the Wills Act), enables every person to dispose by will of all real and personal estate which he shall be entitled to, at law or in equity, at the time of his death, and which, if not so disposed of, would devolve upon his heir at law or customary heir ; or if he became entitled by descent upon the heir at law or customary heir, of his ancestor, or upon his executor or administrator (c), including contingent, executory, or other future interests, and including also rights of entry for conditions broken.

A devisee of copyholds must pay the fees and fines on his admission as if he were a surrenderee ; and the testamentary disposition should be entered on the court rolls (d). As to copyholds.

An estate *pur autre vie* of a freehold nature not disposed of by will is assets by descent in the hands of the heir, if it comes to him by reason of special occupancy, as in the case of freehold land in fee simple ; and where there is no special occupant, it goes to the executor or administrator of the party that had the estate thereof by virtue of the grant, and an estate *pur autre vie* coming to an executor or administrator, either by reason of a special occupancy, or by virtue of the Act, is assets in his hands, to be applied and distributed in the same manner as the personal estate of the testator or intestate (dd). Estates pur autre vie.

In a case where an estate *pur autre vie* was limited to a devisee and his heirs, and the devisee died without heirs, it was held that, under the above section, the estate went to his executors (e).

Previously to the Wills Act an infant could not dispose by will of real estate, but with respect to per- Infants

(c) Sec. 3. A person in possession of land without other title has a

devisable interest : *Asher v. Whitlock*, L. R. 1 Q. B. 1.

(d) Secs. 4, 5—see 4 & 5 Vict. c.

35, s. 89.

(dd) Sec. 6.

(e) *Reynolds v. Wright*, 25 Beav. 100 ; on appeal, 2 De G. F. & J. 590.

sonalty a female might make a will at twelve and a male at fifteen, if proved to be a person of discretion (*f*). Since the Wills Act *no* will of an infant is valid (*g*).

Married women.

The Act provides that *no* will of a married woman shall be valid, except such a will as she might have made before the passing of the Act (*h*). Under this exception, a married woman may dispose by will of personal property held for her separate use, including the savings of her separate income, or may exercise a testamentary power of appointment over real as well as personal estate. She may also, if an executrix, appoint an executor to continue the representation (*i*). And it is now settled that a married woman can dispose by will of real estate limited to her in fee simple for her separate use (*j*). But a will made by a married woman who becomes a widow will not pass property acquired by her after her husband's death (*k*).

Traitors and felons.

Traitors and felons cannot make a will of personal estate, but a felon may dispose by will of real estate where there is no attainder (*l*).

Lunatics, &c.

Lunatics, idiots, and other persons incapacitated from disposing of property by deed, are equally incapable of making a will.

How a will made before the Wills Act must have been executed.

Under the Statute of Frauds it was necessary that a devise of freehold estates should be attested by three credible witnesses; but until the Wills Act a will of copyholds or of personal estate required no attestation, and even if the testator's signature was wanting, the testamentary instrument was supported, if it was reduced into writing by the testator's direction and in his lifetime (*m*). But since the Wills Act every will, whether of real or personal property, must be in writing and signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and the witnesses must attest

Under Wills Act how will must be executed.

(*f*) Bishop *v.* Sharp, 2 Vern. 469.

(*g*) Sec. 7.

(*h*) Sec. 8.

(*i*) 2 Bright's H. & W. 66; 1 Wms. Exors. Part i. Book 2, c. 1, s. 2; *Ib.* Part i. Book 5, c. 2, s. 1.

(*j*) Taylor *v.* Meads, 34 L. J., Ch. 203.

(*k*) Noble *v.* Willock, L. R. 8 C. A. 779.

(*l*) 1 Jarm. on Wills, 38.

(*m*) 1 Jarm. on Wills, 94.

and 'subscribe the will in the presence of the testator, but no form of attestation is necessary (*n*). And an appointment made by will in exercise of any power must be executed in like manner, and such execution is sufficient, notwithstanding that some additional or other solemnity may be required by the instrument creating the power (*o*). Certain exceptions are, however, allowed as regards the wills of soldiers and sailors (*p*).

Where a power of appointment is to be exercised by a writing under the hand and seal of the donee, it cannot be exercised by a will of the donee, executed according to the formalities of the Wills Act if it is not also sealed (*q*) ; and a power of appointing by a writing under hand or by will is not well exercised by a testamentary instrument unattested (*r*).

Powers of appointment by writing under hand and seal.

Questions having frequently arisen as to the sufficiency of the signature with reference to its *position*, an explanatory Act (*s*) was passed, which made the signature sufficient if so placed at, or after, or following, or under, or beside, or opposite to, the end of the will, that it should be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and the Act enumerates various circumstances as regards the position which are not to affect the validity of the will.

Position of the signature.

Where a will has a formal attestation clause, and appears on the face of it to be properly executed, the Court will presume that the requirements of the Wills Act have been complied with, although the memory of the witnesses may have failed. When the attestation clause is informal, the presumption *omnia rite esse acta* applies with less force ; but even in that case, the leaning of the Court is not to allow the testator's intention to be frustrated by lapse of time, and failure of the memory of the witnesses, and if therefore the circumstances are such as reasonably to lead to the conclusion that the will was duly executed, the Court will adopt

Presumption that will is duly executed and attested, when it applies.

(*n*) Sec. 9.

(*o*) Sec. 10.

(*p*) Secs. 11 & 12. See also 28 & 29 Vict. c. 72.

(*q*) *West v. Kay*, 392 ; *Tay-*

*lor v. Meads*, 34 L. J. Ch. 203.

(*r*) *Re Daly's Settlement*, 25 Beav. 456.

(*s*) 15 & 16 Vict. c. 24.

such conclusion (*t*). But even where there is a regular attestation clause, the Court cannot pronounce a will to be duly executed, in the face of the direct testimony of the attesting witnesses to the contrary (*u*).

Person interested not a sufficient witness under old law.

Under the Statute of Frauds, a person taking any interest under a will was considered not to be a credible witness, and consequently a will was invalid if any one of the three attesting witnesses took any beneficial interest under it. Under the Wills Act, a legacy or other benefit given to an attesting witness, or to his or her wife or husband, is void, but the will is in other respects good, and the legatee, &c., is an admissible witness (*v*).

A creditor (when the will contains a charge of debts) may be an attesting witness, and so also may an executor (*w*).

Where one of a class is an attesting witness.

Where there is a gift to a class as joint tenants, and one of the class is an attesting witness, the joint tenancy is not severed, but the whole goes to the other members of the class (*x*).

Legacy to attesting witness, when rendered valid by subsequent codicil.

A legacy given by a will to an attesting witness is rendered valid by a codicil confirming the will attested by other witnesses (*y*). But if a testator makes first a will, secondly, a codicil giving a legacy to a person who is an attesting witness to such codicil, and thirdly, a second codicil which refers to the will but takes no notice of the first codicil, the legacy given by the first codicil remains invalid. (*yy*)

By what local law the execution of wills must be regulated.

A will disposing of real estate must be executed and construed according to the law of the country in which the property is situate, whatever may be the domicile of the testator. But a will of personal estate must be executed and construed according to the law of the country in which the testator is domiciled, subject however to the provisions of a recent Act, commonly called Lord Kingsdown's Act (*z*). By this Act it is provided

Lord Kingsdown's Act.

(*t*) *Vinnicombe v. Butler*, 34 L. J., Prob. 18.

(*u*) *Croft v. Croft*, 34 L. J., Prob. 44.

(*v*) Sec. 15.

(*w*) Secs. 16, 17.

(*x*) *Young v. Davies*, 2 Drew &

Sm. 167.

(*y*) *Anderson v. Anderson*, L. R. 13 Eq. 381.

(*yy*) *Burton v. Newbery*, L. R. 1 C. D. 234.

(*z*) 24 & 25 Vict. c. 114.

that every will or testamentary instrument made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his death) shall, as regards personal estate, be held to be well executed for the purpose of being admitted in England and Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where the same was made, or by the laws then in force in that part of her Majesty's dominions where he had his domicile of origin (*a*). The Act further provides that every will, &c., made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same or at his death) shall, as regards personal estate, be held to be well executed, and shall be admitted to probate, &c., if the same be executed according to the laws for the time being in force in that part or the United Kingdom where the same is made (*b*). And that no will, &c., shall be held to be revoked, or to have become invalid, nor shall the construction thereof be altered by reason of any subsequent change of domicile of the person making the same (*c*).

Previously to the Wills Act the will of a woman was revoked by marriage, and the will of a man was in most cases revoked by marriage *and* the birth of a child, but not by marriage alone.

Effect of marriage as a revocation.

Every will made since the Wills Act is revoked by marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to the heir, customary heir, executor, or administrator, or the person entitled as next of kin under the Statute of Distributions (*d*). A will or codicil may also be revoked by another will or codicil duly executed or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence, and by his direction, with the intention of revoking the same (*e*), and no obliteration, interlineation, or other

Will may be revoked by another will or burning, &c.

Interlineation, &c.,

(*a*) Sect. 1.

(*b*) Sect. 2.

(*c*) See 3. See *in re* Reid, 1 L.

R., Prob. 74.

(*d*) Sect. 18.

(*e*) Sect. 20.

must be  
executed.

alteration will have any effect unless such alteration is executed in like manner as is required for the execution of the will; but the will, with such alteration as part thereof, will be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin, or in some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will (*f*).

How  
revoked will  
may be  
revived.

No revoked will or codicil can be revived otherwise than by the re-execution thereof, or by a codicil showing an intention to revive the same, and if any will or codicil which is partly revoked and afterwards wholly revoked is revived, such revived will will not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown (*g*).

If a person makes a second will, revoking the first, and then destroys or otherwise revokes the second, the first is not thereby revived.

Dependent  
relative  
revocation.

Where a will is destroyed, the presumption is that the act was done *animo revocandi*, but this presumption may be repelled by evidence that such animus did not exist. If a will is destroyed or torn with the intention of setting up some other testamentary instrument, the act of destruction will be a revocation, in case only the testamentary instrument intended to be thereby set up proves efficacious. The revocation in such case is called a dependent relative revocation.

Thus, where a man made a second will, slightly differing from the first, but which second will was invalid for want of a proper attestation, and the testator, after making such second will, cancelled the first by tearing off the seal, it was held that such cancellation being made under the mistaken notion that the second will was effectual was not a revocation (*h*). And in another case where a testator, after having made two successive wills, the second revoking the first, destroyed the second erroneously, supposing that in so doing he was reviving

(*f*) 24 & 25 Vict. 114, s. 21.  
(*g*) Sect. 22.

(*h*) *Onions v. Tyrer*, 2 Vern. 742.

the first, it was held that the second will was not revoked (*i*).

II. *As to the time from which a will speaks, what property passes under a general devise and bequest, and what words are sufficient to carry the fee simple.*

Formerly every devise of freehold and copyhold lands included only such property as the testator was seised of or entitled to at the date of the will, and a devisee of copyholds had no devisable estate before admittance (*k*). Whenever therefore a will contained a *general* devise, and lands were subsequently acquired by the testator which he wished to be included in such devise, it was necessary for him to republish his will, or make a codicil : but in the case of copyholds, a surrender to the use of the testator's will operated as a republication of the will so as to include the after-acquired copyholds in the previous general devise (*l*).

Every devise of real estate was formerly specific.

On the other hand, a general bequest of personal estate embraced all the personalty of which the testator was possessed at the time of his death, the will for this purpose speaking from the death of the testator.

Operation of a general bequest of personalty.

One of the consequences of the above-mentioned doctrine with regard to real estate was, that any disturbance of the devised estate between the date of the will and the testator's death operated as a revocation—as, for instance, the entering into a binding contract for sale, although it afterwards might be rescinded or abandoned (*m*) ; a conveyance, although its effect might be to re-vest the property immediately in the testator, so that he should be in of his old use ; the surrender of a lease for lives in consideration of a new lease (*n*) ; the re-conveyance of land in mortgage to the testator to uses to bar dower where the proviso in the mortgage was for the re-conveyance to him, his heirs, and assigns (*o*) ; or the taking a conveyance by the testator to

Effect of disturbance of testator's estate after date of will.

(*i*) *Powell v. Powell*, 1 L. R. Prob. 209.

(*k*) *Wainwright v. Elwell*, 1 Mad. 627.

(*l*) *Sug. V. & P.* 155.

(*m*) *Tebbutt v. Voules*, 6 Sim. 40

*Andrew v. Andrew*, 8 De G. M. & G. 336.

(*n*) *Poole v. Coates*, 2 Dru. & War. 493.

(*o*) *Plowden v. Hyde*, 2 De G. & M. G. 684.



uses to bar dower of property previously to the will contracted to be purchased by him where the contract did not provide for the form in which the property should be conveyed to the purchaser (*p*). But if the equitable title was simply clothed with the legal estate, there was no revocation, as when the testator by his will devised estates which he had previously contracted to purchase, and subsequently to his will the legal estate was conveyed to him, his heirs and assigns (*q*). So where property was limited to the testator to the usual uses to bar dower, and he appointed and released the property by way of mortgage, subject to a proviso that on payment of the debt, the mortgagee would re-convey the estate to the testator, his heirs, appointees, or assigns, or to such other person or persons, to such uses, and in such manner as he or they should direct, and the mortgagor subsequently made his will, and, after the date of the will, the property was re-conveyed to him to uses to bar dower, it was held that the devise was not revoked (*r*).

Under Wills Act, conveyance after will does not prevent its operating on testator's interest at death.

It is now provided by the 23rd section of the Wills Act, that "no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which the will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death."

Rule of equity as to conversion not affected.

The 23rd sect. does not affect the rule of equity which treats property agreed to be sold as personalty; so that if land devised by a will is afterwards contracted to be sold, but the sale is not effected in the lifetime of the testator, the purchase-money belongs to his personal representatives and not to the devisee (*s*); and this is the case even when the devise is to a trustee upon trust for sale (*t*).

(*p*) *Ward v. Moore*, 4 Mad. 368; see also *Bigg v. Watt*, 4 W. Rep. 786; 11 Jar. Con. by S. 79, *et seq.*

(*q*) *Ward v. Moore*, *ubi supra*.

(*r*) *Plowden v. Hyde*, 2 De G. M. & G. 684.

(*s*) *Farrar v. Earl Winterton*, 5 Beav. 1; *Moor v. Raisbeck*, 12 Sim. 123; *In re Manchester and Southport Railway Company*, 19 Beav. 365.

(*t*) *Gale v. Gale*, 21 Beav. 349.

The Wills Act also provides that every will shall be construed with reference to the real and personal estate comprised therein to speak and take effect as if it had been executed immediately before the death of the testator, unless a *contrary intention* appears by the will (*u*), so that a general devise of the testator's lands will embrace not only those lands which he is entitled to, or has power over, at the date of his will, but all his after-acquired estates—and a copyholder has now a devisable estate before admittance.

Will now speaks from death as to realty as well as personalty, unless a contrary intention appears.

In *Cole v. Scott* (*v*), a devise of all the lands whereof "I am now seised" was held not to pass lands acquired after the date of the will, but this decision must be considered as depending not only on the use of the word "now," but on other expressions in the will which seemed to show an intention on the part of the testator to exclude after-acquired lands. It has been held that a devise of all the lands of which "I am seised" includes after-acquired lands (*w*); and that a devise of all the lands of which "I am seised" in a particular place, passes lands in that place subsequently acquired (*x*); so also a devise of a house in which "A. now resides with the stables and appurtenances thereto belonging" was held to pass a piece of land which the testator had subsequently acquired and converted into a garden which he had attached to the house, so that the house and garden were occupied together up to the testator's death (*y*), and under a devise of "my estate called the C. estate," lands subsequently acquired and added to the estate were held to pass (*z*).

What is sufficient evidence of a contrary intention.

In *Douglas v. Douglas* (*a*), the Vice-Chancellor said, "I can imagine that, under the new statute, a gift of 'all my stock' would pass all stock to which the testator was entitled at the time of his death. But suppose the bequest were of 'all my stock which I have purchased,' that would make a considerable difference, and would, I think, be enough to show that the testator was defining

(*u*) Sect. 24.

(*v*) 1 M. & G. 518.

(*w*) *Doe v. Walker*, 12 M. & W. 590; *Lady Langdale v. Briggs*, 8 De G. M. & G. 391.

(*x*) *Lord Lilford v. Keck*, 30 Beav.

300.

(*y*) *Re The Otley and Ilkley Ry. Co.*, 11 Jur., N. S. 818.

(*z*) *Castle v. Fox*, L. R. 11 Eq. 542.

(*a*) 1 Kay, 400.

the particular portion of property which he intended to give as being property then in his possession."

A bequest of "my New 3½ per Cent. Annuities" was held to comprise all the New 3½ per Cents. which the testatrix had at her death (*b*). V.-C. Wood in this case said, "If I refer to a particular thing, *e.g.*, a ring or a horse, and bequeath it as 'my ring,' or 'my horse,' it would seem that the contrary intention to which the 24th section refers 'appears by the will,' and the will speaks from the date of its execution; but when a bequest is of that which is generic, of that which may be increased or diminished, the Act requires something more on the face of the will for the purpose of indicating such 'contrary intention' than the mere circumstance that the subject of the bequest is designated by the pronoun 'my.'" In another case, a testator bequeathed to his brother "all the shares which I now possess in the Union Bank in Calcutta." After the date of the will and before his death, his property in the Company's funds largely increased, and it was held that the whole of the property passed under the will (*c*). Again where a testator gave "all my money, bank and other shares, freehold property, plate, pictures, coins, books, and any other property that I may now possess," it was held that after-acquired personalty passed under the bequest (*d*). Again, in two cases, where property being leasehold at the date of the will was bequeathed as leasehold to specific devisees, and the testator afterwards acquired the reversion in fee simple, it was held that the fee simple passed by the specific devise, and not under a residuary devise in the same will (*e*).

Under old law general devise did not *prima facie* include leaseholds or property over which testator had a power of appointment.

Previously to the Wills Act a general devise of land included neither leasehold land nor land of any tenure over which the testator had a mere power to appointment, except in those cases in which he had no other land at the date of the will upon which the will could

(*b*) *Goodlad v. Burnett*, 1 K. & J. 341.

(*c*) *Hepburn v. Skirving*, 4 Jur. N. S. 651; see also *Pierce v. Harrison*, 25 L. T. 264; *Stilwell v. Mellersh*, 20 L. J. Ch. 356; *O'Toole v. Browne*, 23 L. T. 111; *Webb v.*

*Byng*, 1 K. & J. 580; *Roths v. Salomons*, 15 Jur. 483.

(*d*) *Wagstaff v. Wagstaff*, L. R. 8 Eq. 229.

(*e*) *Miles v. Miles*, L. R. 1 Eq. 462; *Cox v. Bennett*, ib. 6 Eq. 422.

operate (*f*), or unless an intention was to be clearly gathered from the will to dispose of the leaseholds, or to exercise the power under the general devise; and in the absence of an intention to exercise the power, a general bequest did not operate as an execution of general powers over personalty.

By sect. 26 of the Wills Act it is enacted, that a devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold or leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold and leasehold estates of the testator, or his customary, copyhold and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

It follows from the above enactment, that a general devise of *land* will now pass leaseholds and copyholds as well as freeholds. The construction of the expression "real estate," since the Act as applied to leaseholds, is not so clear. It has been held that leaseholds will pass by the description of the testator's real estate in a particular place (*g*), but if a will gives a real estate to A., and the personal estate to B., the question under which gift leasehold land would pass, is still open to doubt. Such authority as there is, seems to be in favour of its being regarded as personal estate (*h*).

The 27th section provides, that a general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall

Rule altered  
by Wills  
Act.

Effect  
under Wills  
Act of  
general  
devise as to  
property  
which  
testator has  
power to  
appoint.

(*f*) *Rose v. Bartlett*, Cro. Car. 763.  
293; *Gully v. Davis*, L. R. 10 Eq.  
562; 1 Jar. on Wills, 573—587.

(*g*) *Moase v. White*, L. R. 3 C. D. 752.

(*h*) See *Turner v. Turner*, 21 L. J.  
Ch. 843; *Wilson v. Eden*, 5 Exch.

operate as an execution of such power, unless a contrary intention shall appear by the will ; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

A general power given to the survivor of several persons may be exercised by a general devise in a will executed by the ultimate survivor during their joint lives ; and in a case where such a power was vested in A. B., and C., and C., who was a married woman, ultimately became the survivor, it was held that the power was well exercised by a residuary devise in the will of C. made by her will under coverture, and during the life of B. (i).

Effect of  
residuary  
gift with  
regard to  
property  
subject to  
power.

A gift will of the residue of a testator's estate passes property over which the testator has, at the date of the will, a general power of appointment, and also property over which he acquires such a power after the date of his will (k). And it has been held that the words, "I constitute A. B. my residuary legatee" mean the same as a general gift to A. of the residue, and consequently operates as an appointment in his favour under a general power (l). In a late case, a testatrix having a general power of appointment over a trust fund, made a will, giving pecuniary legacies and appointing executors, but the will made no reference whatever to the trust fund or to the power, and contained no residuary bequest. It turned out that the assets of the testatrix other than the trust fund were insufficient to pay the legacies, and Vice-Chancellor Stuart held, that the bequests of the legacies were bequests of personal property "described in a general manner, within the

(i) *Thomas v. Jones*, 2 J. & H. 475 ; S. C. on appeal, 1 De G. J. & S. 63.

(k) *Stillman v. Weedon*, 16 Sim. 26 ; *Patch v. Shore*, 2 Dr. & Sm. 589. But see *Re Ruding's Settle-*

*ment*, L. R. 14 Eq. 266, where the V.-C. thought a contrary intention might be gathered from the circumstances.

(l) *Spooner's Trust*, 2 Sim. N. S. 129.

meaning of the 27th section, and that such legacies were payable out of the trust fund subject to the power" (*m*). And it has also been held that a direction to the executors to pay debts out of the testator's personal estate makes property over which he has a power of appointment part of his general assets (*n*).

The 27th section does not apply to special powers, *i.e.*, powers exercisable in favour of particular objects only. Consequently a general devise of all the testator's property is not an execution of such a power (*o*). The power or the property which is the object of it must be referred to. Where the will contains only a general reference to the testator's powers, as where a devise or bequest is expressed to be made in pursuance of all powers vested in the testator, or is of all the property over which he has any power of appointment, it is a question of intention to be collected from the whole of the instrument whether such a devise operates as an execution of a special power. It will be so held, if the gift is wholly or substantially in favour of persons who are objects of the power (*p*), even though the power is to some extent exceeded. Thus where the bequest was to trustees in trust to pay debts and divide the residue among objects of the power, the power was held to be executed, notwithstanding the trust to pay debts (*q*). Again, where the bequest was to an object for life with remainder in favour of his children, such children not being objects, the life estate was held to be well appointed (*r*). And in the converse case a power to give a life interest in a fund to the donee's wife was held well executed by a will which gave all the property over which the testator had any power of appointment to the wife absolutely (*s*).

A general devise will include estates vested in the

Act does not apply to special powers.

In what cases a special power will be executed by general devise.

Trust and mortgage

(*m*) *Hawthorn v. Shedden*, 3 Sm. & G. 293; *Re Wilkinson's Trusts*, L. R. 8 Eq. 487.

(*n*) *Willday v. Barnett*, L. R. 6 Eq. 193.

(*o*) *Cloves v. Awdry*, 12 Beav. 604.

(*p*) *Bailey v. Lloyd*, 5 Russ. 330; *Pidgely v. Pidgely*, 1 Coll. 255; *Cowx v. Foster*, 1 J. & H. 30; *Fer-*

*rier v. Jay*, L. R. 10 Eq. 550.

(*q*) *Cowx v. Foster*, 1 J. & H. 30; *Ferrier v. Jay*, L. R. 10 Eq. 550; *Clogstoun v. Walcott*, 13 Sim. 523 is disapproved of in the later cases.

(*r*) *Pidgely v. Pidgely*, 1 Coll. 255.

(*s*) *Re Teape's Trust*, L. R. 16 Eq. 442; *Thornton v. Thornton*, ib. 20 Eq. 599.

estates  
when in-  
cluded in a  
general  
devise.

testator as a trustee or mortgagee unless a contrary intention can be inferred from expressions in the will or the purposes and objects of the testator (*t*). Thus, a devise of the testator's property to A. absolutely, clearly passes trust and mortgaged estates (*u*), and in a case where a testator devised all his property to his wife, her heirs, executors, administrators, and assigns, "for all my estate and interest therein, to and for her own absolute use and benefit, and to be disposed of by her by deed, will, or otherwise as she may think fit," it was held that trust estates passed under such devise (*v*). And according to a recent case trust estates pass under a devise to a woman for *her sole use* (*w*).

If property is devised upon trust for sale (*x*), or charged with debts (*y*) or annuities (*z*), or with a gross sum (*a*), or is limited to uses in strict settlement (*b*), trust estates will not pass, as the nature of the disposition sufficiently indicates that the testator did not intend to include any property beyond that in which he was beneficially interested. And for the same reason a devise to an unascertained class, *e.g.*, to all the testator's nephews and nieces will not include trust or mortgaged estates (*c*).

Whether a  
gift of  
"securities  
for money,"  
&c., passes  
legal estate  
of mort-  
gaged  
property.

In the absence of a contrary intention, a gift of "mortgages," or "securities for money," will pass not only the money secured but also the legal estate in the mortgaged property, although the words may be placed among words relating to personal estate only, or the gift may be to the donee, his *heirs*, *administrators*, or *assigns*, and not to his *heirs*, and although the gift

(*t*) Lord Braybrooke v. Inskip, 8 Ves. 417. Until this case the rule seems to have been unsettled. See Duke of Leeds v. Munday, 3 Ves. 348; *Ex parte* Sergison, 4 Ves. 147; Attorney General v. Buller, 5 Ves. 341; *Ex parte* Brettell, 6 Ves. 577; and the observations of the court on those cases in Lord Braybrooke v. Inskip, 8 Ves. pp. 433 to 435.

(*u*) Marlow v. Smith, 2 P. W. 197; Lord Braybrooke v. Inskip, *ubi supra*; Sharpe v. Sharpe, 12 Jur. 508.

(*v*) Lewis v. Mathews, 2 L. R. Eq. 177; *Ex parte* Shaw, 8 Sim. 159.

(*w*) Lindsell v. Thacker, 12 Sim. 178, is apparently overruled. See Gilbert v. Lewis, 1 De G. J. & S. 38.

(*x*) *Ex parte* Marshall, 9 Sim. 555.

(*y*) Roe d. Reade v. Reade, 8 Durn. & E. 118.

(*z*) Duke of Leeds v. Munday, 3 Ves. 348; *Ex parte* Morgan, 10 Ves. 101.

(*a*) Rackham v. Siddall, 16 Sim. 297; Hope v. Liddell, 21 Beav. 183.

(*b*) Co. Litt. 203, b. note 96.

(*c*) *Re* Finney's Estate, 3 Giff. 465. See also Martin v. Laverton, L. R. 9 Eq. 563.

may be subject to debts and legacies, or upon trusts for sale and conversion (a). But a bequest of *money on securities* does not carry the legal estate in the mortgaged property (b).

A devise of the residue of a testator's estate, following a direction to pay debts or a bequest of legacies will pass estates vested in a testator as mortgagee in his own right (c), but the question whether it will pass estates vested in him as a trustee has been the subject of conflicting decisions. Jessel, M. R. has decided that it will not (d), and Malins, V.-C. that it will (e).

Residuary devise following a direction to pay debts, or legacies, passes estates held on mortgage, but whether it passes trust estates *quære*.

Rule applies to lands, contracted to be sold.

THE rule that a general devise will pass trust estates unless a contrary intention can be inferred, applies to land which a testator has contracted to sell, the sale being uncompleted at his death. In *Wall v. Bright* (f), a testator after a contract for sale devised all his lands to trustees in trust for sale, and it was held that the land comprised in the contract passed by the devise. In *Thirle v. Vaughan* (g), a testator after specific devises gave the residue of his estate to his three children as tenants in common, subject to a gift over as to the share of any child dying under twenty-one. After the date of the will the testator contracted to sell some land, and the Court held that such land did not pass by the will. These two decisions must be reconciled on the ground that in the former case a trust for sale was not considered inconsistent with an intention that the devisees in trust should take the subject of an uncompleted contract, whereas the executory devise in the latter was thought inconsistent with such an intention.

In both the above cases there was no express devise

Land contracted to

(a) *Renvoize v. Cooper*, 6 Mad. 371; *In re King's Mortgage*, 5 De G. & Sm. 644; *In re Field's Mortgage*, 9 Hare, 414; *In re Walker's Estate*, 21 Law J. Ch. 674; *Knight v. Robinson*, 2 K. & J. 503; *Rippen v. Priest*, 32 L. J. C. P. 65.

(b) *Ex parte Cautley*, 17 Jur. 124; 22 L. J. Ch. 391. In *Doe d. Guest v. Bennett*, 6 Exch. 892, it was held that a devise in these words, "I leave my wife R. H. to receive all moneys upon mortgages," gave her the legal estate in the mortgaged

premises; but the decision seems to have been disapproved of by *Kindersley, V.-C.*, in *Ex parte Cautley*; see also *Re Arrowsmith's Trusts*, 4 Jur. N. S. 642.

(c) *Re Stevens*, L. R. 6 Eq. 597. See also *Re Packman and Moss*, L. R. 1 Ch. D. 214.

(d) *Re Bellis's Estate*, L. R. 5 C. D. 504.

(e) *Brown and Sibly's contract*, L. R. 3 C. D. 156.

(f) 1 J. & W. 494.

(g) 2 W. R. 632.



be sold  
passes  
under an  
express  
devise of  
trust and  
mortgage  
estates.

of estates vested in the testator as a trustee or mortgagee, and the only question was whether the land passed by the general devise or devolved on the heir at law. It has been lately decided that where a will contains a devise of a testator's general estate, and also a devise of estates vested in him as a trustee or mortgagee, land contracted to be sold passes by the latter (not the former) devise (*h*).

Effect of  
devise  
without  
words of  
limitation  
under old  
law.

What was  
sufficient to  
carry the fee  
simple.

Prior to the Wills Act, a devise of land without words of limitation conferred an estate for life only on the devisee. But an indefinite devise was frequently enlarged into a fee simple whenever an intention to dispose of such larger estate could be collected from the language of the will. Thus, if a devise was made on condition that the devisee should pay the testator's debts or certain annuities or legacies, or a particular sum, so as to make the satisfaction of such sums the personal obligation of the devisee, he took an estate in fee simple, on the ground that if he only took an estate for life he might be a loser by such gift (*i*). The devisee also took an estate in fee simple if the devise to him was followed by a gift over on his dying under twenty-one (*j*). Again, a devise of the testator's estate generally, or of his estate in a particular place (*k*), or by a particular name (*l*), or description (*m*), carried the fee. The words "remainder," "reversion," "property," "inheritance," "right," "title," &c., &c., were also terms generally sufficient to carry the fee (*n*).

Effect of  
similar  
devise since  
Wills Act.

Under the Wills Act, a devise of real estate *without words of limitation* operates to pass the fee simple or other the whole estate or interest which the testator had power to dispose of, unless a contrary intention appears by the will (*o*).

(*h*) *Lysaght v. Edwards*, L. R. 2 C. D. 499. This decision is in accordance with the opinion expressed on this point in the last edition of this work.

(*i*) *Doe v. Holmes*, 8 T. Rep. 1; *Goodright v. Stocker*, 5 T. R. 13; *Goodtitle v. Maddern*, 4 Ea. 496.

(*j*) *Doe v. Cundall*, 9 Ea. 400.

(*k*) *Barry v. Edgeworth*, 2 P. Wms.

522.

(*l*) *Chichester v. Oxenden*, 4 Taunt. 176.

(*m*) *Roe d. Child v. Wright*, 7 East, 259; *Harding v. Gardner*, 1 Br. & B. 72; *Paris v. Miller*, 5 M. & S. 408.

(*n*) 2 Jarm. Wills, 253, *et seq.*

(*o*) Sect. 28.

III. *In what cases trustees take the legal estate under a devise, and as to the extent of their estate.*

Where property is limited by will to the use of trustees, the legal estate vests in them by force of the words employed (*p*), but if the devise is to them to the use of or in trust for other persons, the question whether they take the legal estate depends on whether they have any duties to perform which require that they should take it. And when it has been thus ascertained that they take *some* estate, a question often arises as to the duration of such estate. As regards wills governed by the old law, the rule is that a devise to trustees which does not expressly limit the duration of the estate gives them an interest commensurate with the trusts to be performed. But as regards wills made since the Wills Act the rule has been modified by the 30th and 31st sections of the Act, which provide that where any real estate (other than or not being a presentation to a church) is devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable on an estate in freehold is thereby given to him expressly or by implication: And that where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate or in the surplus rents and profits thereof is not given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will, in such real estate, and not an estate determinable, when the purposes of the trust shall be satisfied.

A devise to trustees upon trust, or to the intent that they shall receive the rents and pay them to A. (*q*), or upon trust to pay out of the rents, after deducting

Question whether trustees take legal estate; upon what it depends.

Cases in which trustees have been held to take legal estate.

(*p*) 2 Jarm. Wills, 269.

(*q*) Doe v. Humfray, 6 Ad. & El. 206.

rates, taxes, and repairs, such clear sum as should remain to A. (*r*), or to permit the devisee to receive the *net* rents (*s*), vests the legal estate in the trustees.

But under a devise to A. upon trust to permit B. to receive the rents (*t*), or to pay unto or permit B. to receive the rents (*u*), or to receive the rents and pay the same to A., or otherwise permit him to receive the same (*x*), the legal estate vests in B., and A. takes no estate. But under a devise to a trustee to permit a *feme covert* to receive the rents for her separate use, the trustee takes the legal estate, as otherwise the rents would be receivable by the husband, which could not have been the testator's intention (*y*). And when there are several trusts for the separate use of married women during their lives, separated by intervening limitations which if taken alone would vest the legal estate in the persons beneficially interested thereunder, the legal estate will be held to be vested in the trustees throughout, and the intervening estates are equitable only (*z*).

Where trustees are directed to convey.

Devise to trustees in trust to pay annuities, &c.

Trustees will take the legal fee, when by the will they are directed to convey to a third person (*a*).

In wills under the old law a devise to trustees in trust to pay annuities, and subject thereto in trust for A. gives the trustees an estate during the lives of the annuitants, and a devise to trustees in trust to apply the rents for the maintenance of A., until he attains twenty-one, and then to A. absolutely, gives the trustees an estate during A.'s minority only, but in both these cases the trustees would take the entire fee simple under a will made since the Wills Act.

A trust to raise money by sale or mortgage gives the trustees the legal estate.

Where land is devised to trustees in trust to raise money by sale or mortgage for payment of the testator's debts, or such of his debts as his personal estate will not satisfy (*b*), or upon trust to demise or let the

(*r*) *Shapland v. Smith*, 1 B. C. C. 74.

(*s*) *Barker v. Greenwood*, 4 M. & W. 421.

(*t*) *Right d. Phillips v. Smith*, 12 East, 455.

(*u*) *Doe d. Leicester v. Biggs*, 2 Taunt. 109.

(*x*) *Baker v. White*, L. R. 20 Eq. 166.

(*y*) 2 Jar. on Wills, p. 243.

(*z*) *Harton v. Harton*, 7 T. R. 652; *Brown v. Whiteway*, 8 Hare, 145; see also *Doe d. Waller v. Claridge*, 6 C. B. 641.

(*a*) *Garth v. Baldwin*, 2 Ves. Sen. 646.

(*b*) *Bagshaw v. Spencer*, 1 Ves. Sen. 142; *Gibson v. Lord Montford*, *ib.* 485.

same (c), and subject to such trusts the land is directed to be held in trust for other persons, or is given directly to other persons, the trustees take the legal estate whether the will is under the old or the new law.

So also they take the legal estate under a devise upon trusts, which taken alone would not have that effect, if such devise is followed by a power enabling them to raise money by sale or mortgage for payment of debts (d), and the result is the same, if the power arises by implication, as where there is a direction that the debts shall be paid by the executors, who are also the trustees (e), and according to one case (f) a mere direction for payment of debts without saying by whom, followed by a devise to trustees who are also the executors, has the same effect, but the last case seems hardly consistent with an earlier one, where real estate was charged with the testator's debts, so far as the personal estate should be insufficient to pay the same, and subject thereto, was devised to trustees upon trusts by way of settlement, and it was held that they did not take the legal fee on the ground that there was no sufficient indication of the testator's intention that they were the persons by whom the debts were to be paid (g).

So also does a power, whether express or implied, from a direction to pay debts.

If the words of a will made under the old law were otherwise sufficient to carry the fee to the trustees, the fact that they were empowered to grant leases afforded an argument of weight in favour of their being construed so as to confer the whole legal fee on the trustees, but it was not conclusive, and when the testator's intention could be effected by holding that the trustees had an estate during the continuance of the trusts of the will, with a power to lease while the estate vested in them for the purpose of the trust continues, the devise was so construed (h).

Effect of power of leasing being given to trustees.

The rule which (subject to the modifications intro-

Application of rule to

(c) *Doe v. Willan*, 2 B. & Ald. 84.  
(d) *Doe d. Cadogan v. Ewart*, 7 Ad. & El. 637; *Doe v. Davis*, 1 Q. B. 430, 10 L. J. N. S. Q. B. 169.

(e) *Spence v. Spence*, 31 L. J. C. P. 189.

(f) *Creaton v. Creaton*, 3 S. & G.

386.

(g) *Kendrick v. Beauclerk*, 3 Bos. & Pul. 175.

(h) *Doe d. Keen v. Walbank*, 2 B. & Ad. 554; *Doe d. Kimber v. Cafe*, 7 Exch. 675; *Blagrove v. Blagrove*, 4 Exch. 550.

copyholds  
or lease-  
holds.

duced by the Wills Act) limits the estate of the trustees under an indefinite devise to one commensurate with the trusts to be performed, applies to copyholds and leaseholds. Thus, a devise of copyholds to A. and his heirs in trust for B. and his heirs, or in trust for B. for life, and at his death in trust for C. and his heirs, gives A. the legal estate in the whole customary fee, because copyholds are not within the Statute of Uses; but if the devise to A. and his heirs in trust for B. for life and after his death *to* (not in trust for) C. and his heirs, A. takes an estate for the life of B. only, with a legal remainder on the death of B. to C. (*i*), and in like manner a bequest of leaseholds to A. in trust for B. gives A. the whole term, but under a bequest to A. in trust for B. for life, and after B.'s death *to* C., it is apprehended (*k*) that A. takes the term, subject to an executory bequest in favour of C. to take effect on B.'s death (*l*).

IV. *Legacies, general and specific vested and contingent, gifts to children, next of kin, &c.*

Definition of  
a general  
legacy.

Legacies are either general or specific. A general legacy is a gift of money or something else to be paid, raised, or procured out of the testator's personal estate generally, and is not necessarily a part of such estate. Thus a gift of £100 money or £100 stock is a good legacy, although the testator may have no cash or no stock at his death, and in such a case his executors must raise or buy it out of whatever personal property he may leave. A specific legacy is a gift of some speci-

(*i*) Doe d. Woodcock v. Barthrop, 5 Taunt. 382; Baker v. White, L. R. 20 Eq. 166.

(*k*) Stevenson v. Mayor of Liverpool, L. R. 10 Q. B. 81.

(*l*) All limitations to trustees in a *deed* are strictly construed, and will take effect according to their strict legal meaning, unless the very object and intention of the instrument would be defeated by such a construction. (See Venables v. Morris, 7 T. R. 342; Wykham v. Wykham, 18 Ves. 395; Colmore v. Tyndale, 2 Y. & J. 605.) In a case where in terms a legal fee was given

to trustees to preserve contingent remainders, and afterwards by the same instrument a term of 500 years was limited to the same trustees, their executors, administrators, and assigns for the purpose of raising a given sum of money by sale or mortgage for younger children's portions, the court held that the limitation of a term of years to the trustees was so inconsistent with the limitation of the fee to them, that the limitation to the trustees and their heirs must be restricted to an estate *pur autre vie* by necessary implication. (Curtis v. Price, 12 Ves. 89.)

fied part of the testator's property, as a gift of "all my furniture," or "all the furniture that I may leave at my death," or "all my shares and stock in a railway company," and such a gift will include whatever property of the kind described the testator may leave at his death. But the thing given must be severed from the rest of the testator's property, and form the subject of a distinct gift. Thus, if a testator gives "all my leasehold property, furniture, stock in trade, and all other my estate and effects," then the whole gift is residuary (*m*).

Definition of a specific legacy.

If there is a deficiency of assets to pay the testator's debts, the general legacies abate rateably, but the specific legacies are not liable to abatement until the fund applicable for general legacies is exhausted. And a specific legatee is entitled to have his legacy exonerated out of the general estate from charges created by the testator as distinguished from charges incidental to the property, such as the rent on leaseholds, or the calls on railway shares (*n*).

Abatement in case of deficiency of assets.

Specific legatee entitled to be exonerated from charges.

It follows from the nature of a specific legacy, that if the testator has not at his death any article answering the description of the thing bequeathed, the legacy fails. If the gift is of something which was his property when he made his will, and he parts with it before his death, it is said to be adeemed.

Adeemption.

The legatee is entitled to the interest and produce of a specific legacy from the testator's death (*o*), and the current dividend is apportionable under the Apportionment Act (*p*). With respect to a general legacy, if no time is appointed for its payment, it will carry interest at the rate of £4 per cent. per annum from the expiration of one year from the testator's death; and this rule extends to legacies under the will of a *feme covert* made in exercise of a power (*q*); but if a time of payment is mentioned, then the legacy will not carry interest before the appointed period,—as if a legacy is directed to be

Interest on legacies.

(*m*) See *Bothamley v. Sherson*, L. R. 20 Eq. 304.

Sm. 367.

(*n*) *Bothamley v. Sherson*, *ubi supra*.

(*p*) *Pollock v. Pollock*, L. R. 18 Eq. 329.

(*o*) *Barrington v. Tristram*, 6 Ves. 345; *Wright v. Warren*, 4 De G. &

(*q*) *Tatham v. Drummond*, 2 H. & M. 262.

paid to the legatee when he shall attain twenty-one (*r*). If, however, the legatee is the child of the testator and under age, interest on the legacy would be allowed him for maintenance from his parent's death, if there is no other fund provided for that purpose (*s*).

Annuity commences from death.

An annuity for life, given by will, commences from the death of the testator, and the first payment (where the will is silent as to the time of payment) is due at the expiration of one year from that time (*t*).

Legacy payable at a future day, whether vested or contingent.

When a legacy is given, payable at a future day, as on the legatee attaining a particular age, a question often arises whether the time for payment is annexed to the form or the substance of the gift; in other words, whether the arrival of the time is a condition precedent to the vesting of the legacy. Upon this subject the following points have been settled by the authorities.

Points decided on this subject.

1. Where there is a complete gift independent of direction as to time of payment.

1. Where there is a gift complete in itself, with a direction superadded as to the time of payment, as if a legacy is given to A., to be paid to him at twenty-one, or to the children of A., to be paid to them respectively as and when they shall respectively attain twenty-one, the legacy vests immediately and the payment only is postponed (*u*). And it makes no difference that the direction as to the time of payment precedes the words of gift; thus, a direction to pay or assign a legacy, and its investments to the children of A., as and when they shall respectively attain twenty-one, "to whom I give and bequeath the same accordingly," has been held to confer a vested interest on all the children living at the testator's death (*x*).

2. When time of payment is of the essence of the gift.

2. Where the time of payment is annexed to the gift itself, or where there is no gift except in the direction to pay or divide, as for example, where a legacy is given to A. when he shall attain a certain age, or to the children of A. when they shall respectively attain a certain age, or where trustees are directed to pay a legacy to

(*r*) *Hearle v. Greenbank*, 3 Atk. 716.

(*s*) *Harvey v. Harvey*, 2 P. Wms. 21; *Inledon v. Northcote*, 3 Atk. 438; *Wynch v. Wynch*, 1 Cox, 433.

(*t*) *Gibson v. Bott*, 7 Ves. 96.

(*u*) *Monkhouse v. Holme*, 1 B. C. C. 297; *Vivian v. Mills*, 1 Beav. 315;

*Blease v. Burgh*, 2 Beav. 221; *May v. Wood*, 3 B. C. C. 471; *Sidney v. Vaughan*, 2 Bro. Parl. Ca. 254; *Booth v. Booth*, 4 Ves. 399; *Shrimpton v. Shrimpton*, 31 Beav. 425.

(*x*) *In re Bartholomew*, 1 Mac. & G. 354; *King v. Isaacson*, 1 Sm. & Gif. 371.

A., or to divide a trust fund among the children of A. "when" he or they shall attain a certain age, *and there is nothing more*; in each of these cases the legacy is contingent (y).

3. But very slight circumstances in the context will alter the construction, particularly where the bequest is of a residue, and not of a legacy merely (z). Thus, if a legacy is given to a person or a class "at," or "when," he or they shall attain a certain age, and is accompanied by a gift of the interest in the meantime, or by a direction to apply such interest for the maintenance of the legatee or legatees, or if the legacy is directed to be immediately separated from the estate, the legacy vests at once (a).

3. Where interest is given to legatee, or for his maintenance.

In *Vawdry v. Geddes* (b), there was a bequest of residue for the testatrix's four sisters for life, and after their deaths to apply the income for the benefit of the children of each daughter until they should respectively attain twenty-two, when they were to be entitled to their mother's share of the principal, with a gift over on the death of any of them under that age, and it was held that the children did not attain a vested interest until twenty-two, and consequently that all the gifts subsequent to the life estates given to the four sisters were void for remoteness. Sir J. Leach in that case observed, "Where *interim* interest is given, it is presumed the testator meant an immediate gift, because, for the purpose of interest, the particular legacy is to be immediately separated from the bulk of the property, but that presumption fails entirely when the testator has declared that the legacy is to go over in case of the death of the legatee before a particular period." This doctrine seems to lead to the inference that where a

*Vawdry v. Geddes.*

(y) *Hanson v. Graham*, 6 Ves. 239; *Chance v. Chance*, 16 Beav. 572; *Ford v. Rawlins*, 1 Sim. & Stu. 328; *Lloyd v. Lloyd*, 3 K. & J. 20.

(z) *Pearman v. Pearman*, 33 Beav. 394, 397.

(a) *Hanson v. Graham*, 6 Ves. 239; *Saunders v. Vautier*, Cr. & Ph. 240; *Davies v. Fisher*, 5 Beav. 201; *Harrison v. Grimwood*, 12 Beav. 192; *Leeming v. Sherratt*, 2

*Hare*, 14; *In re Smith's Will*, 20 Beav. 197; *Eccles v. Birkett*, 4 De G. & Sm. 105; *Re Rouse's Estate*, 9 Hare, 655; *James v. Lord Wyndford*, 1 Sm. & Gif. 40; *Tatham v. Vernon*, 29 Beav. 604; *Re Hart's Trusts*, 3 De G. & J. 198; *Shrimpton v. Shrimpton*, 31 Beav. 425; *Dundas v. Wolfe Murray*, 1 H. & M. 425.

(b) 1 R. & M. 208.



legacy is given in terms which, but for the gift over, would constitute it a vested legacy, the mere circumstance of the gift over prevents its vesting. But such a proposition could not be maintained, for in ordinary cases a gift over upon a contingency does not prevent vesting in the first donee, but the first gift is considered to be vested subject to being divested; and in a recent case, where there was a bequest to the children of A. for their maintenance until twenty-two, they to receive the principal and interest as they attain such age, in equal shares, followed by a gift over should either die before twenty-two, it was held that the children took vested interests, notwithstanding the gift over, and that the gift over being too remote was void (c).

But a gift to A. for life, and after her decease to her children who shall attain twenty-two, followed by a maintenance clause as to children under twenty-one, is void for remoteness; the gift being to a class, the time for ascertaining which is beyond the prescribed limits (d).

4. Where payment of legacy is postponed for convenience of estate.

4. Where the payment of the legacy is postponed for the convenience of the estate,—as if a legacy is directed to be paid to A., after the decease of B., to whom a life interest is bequeathed.—A. takes a vested interest on the testator's decease, the payment to A. being postponed only for the purpose of enabling B. to enjoy a prior life interest in the legacy (e).

Gift to a woman on marriage, how construed.

A simple gift of a *legacy* to a woman, to be paid to her on her marriage, provided she marries with the consent of certain persons, has been held to be contingent (f). But where a *residue* was bequeathed to trustees upon trust to pay the income to the testator's two grandnieces (who were both of age), until their respective marriages, and from and after their respective marriages to assign to them their respective moiety, and one of the grandnieces afterwards died without having married, it was held that she took a vested interest in her moiety, one of the grounds of the decision being that there was a difference between a

(c) *Hobbs v. Parsons*, 2 Sm. & Gif. 212; see also *Davies v. Fisher*, 5 Beav. 201; *Hardcastle v. Hardcastle*, 1 H. & M. 405.

(d) *Thomas v. Wilberforce*, 31

Beav. 299.

(e) *Adams v. Robarts*, 25 Beav. 658.

(f) *Atkins v. Hiccocks*, 1 Atk. 500.

legacy and a residue with respect to the application of the rules as to vesting (g). And in a recent case a testator gave one-third of his residue to his son and daughter in equal shares, the share of the son to vest at twenty-four, and the share of the daughter to vest on her marriage, with the consent of her guardian, with a gift over of the son's share on his death under twenty-four, and of the daughter's share on her death without having married "with such consent as afore-said;" and it was held that the daughter having attained twenty-one without being married was entitled to her share (h).

The rule which is established as to legacies charged on and payable out of real estate, is well expressed by Mr. Butler, who observes, that, "when a legacy is bequeathed to a child on his attaining twenty-one or marrying, or on any other event personal to him, the legacy is evidently postponed to the time specified, from its being considered that the legatee will then want the benefit of the legacy; but when the estate is devised to a person for life, and after his decease is charged with a legacy, the legacy is evidently postponed till the decease of the devisee for life from its being incompatible with his life estate that it should be raised in his lifetime. The payment of the legacy is therefore considered to be postponed in the first case from regard to circumstances personal to the legatee, and in the second from regard to the circumstances of the estate, and it has been inferred that, in cases of the first description the testator does not intend the legatee shall receive the legacy, unless the circumstances happen in which the testator made it payable, and that in cases of the second description the testator intends the legatee shall receive it at all events. In the former case, therefore, it has been held that if the legatee dies while the time of payment is in suspense, the legacy sinks into the land for the benefit of the inheritance, and in the latter case it has been held, that if the legatee dies during the continuance of the preceding estate or interest, his personal representatives will be entitled on its determination to have the legacy raised for their

Legacies  
charged on  
land.

(g) Booth v. Booth, 4 Ves. 399.

(h) West v. West, 4 Giff. 198.

benefit (*i*). As to cases of the first description, however, the legacy will vest if the testator declare that it shall do so at his death" (*k*).

Legacy charged on land devised is not affected by lapse of devise.

In every case where a legacy charged on land is given on a contingency, and the contingency does not happen, the charge sinks for the benefit of the devisee (*l*). On the other hand, if land is devised charged with a sum of money, the lapse of the devise does not affect the charge (*m*), and if a gift is made to A. with a gift over on a contingency (which happens) to B. and B. dies in the testator's lifetime, the subject of the gift goes to the residuary legatee (*n*).

Construction of testamentary gifts to children.

In the bequest of legacies to children, a question often arises, what objects are to be included in the bequest under certain circumstances, and the rules of construction on this subject, laid down by Mr. Jarman in his valuable Treatise on Wills, will place the matter before the reader in a useful and intelligible form. He says: "First. That an immediate gift to children, whether it be to the children of a living or a deceased person, and whether to children simply, or to all the children, and whether there be a gift over in case of the decease of any of the children under age or not, comprehends the children living at the testator's death (if any), and those only. Secondly. That where a particular estate or interest is carved out, with a gift over to the children of the person taking that interest, or the children of any other person, such gift will embrace not only the objects living at the death of the testator, but all who may subsequently come into existence before the period of distribution. Thirdly. That where the period of distribution is postponed until the attainment of a given age by the children, the gift will apply to those who are living at the death of the testator, and who come into existence before the first child attains that age, *i.e.*, the period when the fund becomes distributable in respect of any one object or member of the class (*o*). Fourthly. With

(*i*) Fearn's Cont. Rem. p. 556, n.

(*k*) *Watkins v. Cheek*, 2 S. & St.

199.

(*l*) *Gawler v. Standerwick*, 2 Cox,

15.

(*m*) *Wigg v. Wigg*, 1 Atk. 382.

(*n*) *O'Mahoney v. Burdett*, L. R. 7 H. L. 388.

(*o*) *Gimblett v. Purton*, L. R. 12 Eq. 427.

regard to immediate gifts, it is well settled that if there be no object *in esse* at the death of the testator, the gift will embrace all the children who may subsequently come into existence by way of executory gift; and with regard to gifts preceded by an anterior interest, the weight of authority is in favour of the position, that in all such cases, except in the instance of a legal remainder of real estate, if there is no object at the time of the vesting in possession, all the children subsequently born will be let in. Fifthly. That where the words, 'to be born,' or 'to be begotten,' are annexed to a devise or bequest to children, if the gift be immediate so that it would, but for the words in question, have been confined to children (if any) existing at the testator's death, they will have the effect of extending it to all the children who shall ever come into existence" (p).

Sometimes a power of appointment amongst children, or some other class of objects, is so expressed as to amount to a trust in favour of such objects in default of appointment. Where this is the case, the objects take an interest commensurate with that which might have been appointed (q); and if the power is given in terms which are particularly applicable to a tenancy in common, the objects will take as tenants in common, and not as joint tenants. In *Crozier v. Crozier* (r), an estate was devised to A. for life, with remainder to his issue, to be divided between and amongst them in such manner, shares, and proportions as he by his will should appoint. A. having died without having exercised the power of appointment, it was held that on his death the issue took absolute interests as tenants in common (s). In *Wace v. Mallard* (t), the testator bequeathed his property to his widow, her heirs, executors, administrators, and assigns, for her sole benefit, with full confidence that she would appropriate it for the benefit of all her children, and it was held that the bequest amounted to a gift to the widow for life, with a power of appoint-

Interest to be taken where power of appointment amounts to a trust.

(p) See 2 Jar. on Wills, 142, et seq.; *Mogg v. Mogg*, 1 Mer. 654.

(q) *Crozier v. Crozier*, 3 D. & W. 383; *Kavanagh v. Morland*, 1 Kay, 16.

(r) *Ubi supra*.

(s) See also *White v. Wilson*, 22 L. J. Ch. 62.

(t) 21 L. J. Ch. 355.

ment in favour of her children, with a gift in default of appointment to her children as *joint tenants*.

Who take  
under a gift  
to next of  
kin, and  
*simpliciter*,

A gift to the next of kin of A. without more, creates a joint tenancy in the persons who are nearest of kin to A. in equal degree without reference to the statutes of distribution, so that if A. leaves two brothers and a nephew (the child of a deceased brother), or a father and child, the two brothers to the exclusion of the nephew in the one case, and the father and child in the other case, would take the property as joint tenants (*u*). But if the gift is to the next of kin according to the statutes of distribution, the persons to take will be the relations of A., amongst whom the personal property of an intestate is made distributable by the statute, and such persons will take as *tenants* in common (*x*); but a wife or husband (not being of the kin of A.) cannot take under such a gift (*y*).

or under a  
gift to next  
of kin  
according to  
the statutes  
of distribu-  
tion.

At what  
time next  
of kin are to  
be ascer-  
tained.

It is a settled rule that under a gift to the next of kin of the testator, whether the gift be immediate or preceded by a life interest, the persons to take are those who answer the description at the death of the testator unless a contrary intention is clearly shown (*z*).

A gift to the person or persons entitled under the statute of distributions, excludes the husband, whose right is not under that statute (*a*).

Who takes  
under a gift  
to executors  
or adminis-  
trators,

A gift of personal property to A. for life, and after his decease to his executors or administrators, vests the subject of the gift absolutely in A., and on his death it passes to his executors or administrators as part of his assets, and it makes no difference that between the life interest and the ultimate gift intermediate interests are given to other persons or a power of appointment is given to A. himself (*b*). So also if a gift is made to A.

(*u*) *Elmsley v. Young*, 2 M. & K. 780; *Withy v. Mangles*, 4 Beav. 358; 10 Cl. & Fin. 215; *Baker v. Gibson*, 12 Beav. 101; *Lucas v. Brandreth*, 28 Beav. 274; *Avison v. Simpson*, John. 43; *Rook v. Attorney-General*, 31 Beav. 313; *Halton v. Foster*, 3 L. R. Ch. App. 505.

(*x*) *Bullock v. Downes*, 9 H. L. C. 30; *Ranking's Settlement Trusts*, 6 L. R. Eq. 601.

(*y*) *Cholmondeley v. Lord Ash-*

*burton*, 6 Beav. 86; *Kilner v. Leech*, 10 Beav. 362.

(*z*) *Bullock v. Downes*, *ubi supra*; *Wharton v. Barker*, 4 K. & J. 488; *Lee v. Lee*, 1 Dr. & Sm. 85; *Moss v. Dunlop*, John. 490; *Mortimer v. Slater*, L. R. 7 C. D. 322.

(*a*) *Milne v. Gilbert*, 2 D. M. & G. 715.

(*b*) *Daniel v. Dudley*, 1 Phil. 1; *Attorney-General v. Malkin*, 2 Phil. 64; *Hames v. Hames*, 2 Keen, 646;

and in case of his death to his executors or administrators, and A. dies before the testator, the property passes to his executor as part of his assets (c).

The term "representatives" or "legal representatives" means *prima facie* "executors or administrators" (d); but the context frequently shows that it was the intention of the testator to use the term in a different sense,—as if a testator directs that the legal representatives shall take "share and share alike" (e), or "*per stirpes*" (f), in which cases the persons entitled under the statutes of distribution have been held to be the objects of the gift. Again, if personal estate is given immediately and without the intervention of any previous interest to A., or in case of his death to his "representatives" or "legal representatives," A. takes absolutely if he survives the testator, but if he dies in the testator's lifetime the property goes to the persons entitled to his personal estate under the statutes of distribution, and not to his executors or administrators, on the ground of the improbability that the testator should mean the legacy to be thrown into the general assets of the legatee dying before him (g).

When a gift of a legacy is followed by a gift over on the death of the legatee, the question often arises whether the death referred to is a death at any time, or a death within a particular period. In *Edwards v. Edwards* (h) the cases on this subject were divided into four classes. (1) Where the gift is to A., and if he shall die to B.; (2) A gift to A., and if he shall die without children to B.; (3) To X. for life, with

*Page v. Soper*, 22 L. J. Ch. 1044; *Graffey v. Humpage*, 1 Beav. 46. In *Mackenzie v. Mackenzie*, 3 M. & G. 559, there was a gift to A., with remainder to his appointees, and A. appointed the property to his executors or administrators, and it was held that it formed part of his personal estate, which might be disposed of by him, or in the event of his intestacy would devolve on his representatives as such.

(c) *Long v. Watkinson*, 17 Beav. 471.

(d) *Corbyn v. French*, 4 Ves. 418; *Saberton v. Skeels*, 1 R. & M. 587;

*Taylor v. Beverley*, 1 Coll. 108; *Hinchliffe v. Westwood*, 2 De G. & Sm. 216; *In re Crawford's Trusts*, 2 Drew, 230; *Dixon v. Dixon*, 24 Beav. 129.

(e) *Smith v. Palmer*, 7 Hare, 225; *King v. Cleaveland*, 4 De G. & J. 477.

(f) *Atherton v. Crowther*, 19 Beav. 448.

(g) *Bridge v. Abbott*, 3 B. C. C. 224; *Cotton v. Cotton*, 2 Beav. 67; *In re Crawford's Trusts*, *ubi supra*. See also *In re Gryll's Trusts*, L. R. 6 Eq. 590.

(h) 15 Beav. 357.

or under a gift to "representatives," or "legal representatives."

remainder to A., and if A. shall die to B.; (4) To X. for life with remainder to A., and if he shall die without children to B., and the Court stated as the result of the cases that, in the 1st class, the contingency is the death of A. in the testator's life; in the 2nd, death at any time; and in the 3rd and 4th, death before X. But it has been decided by the House of Lords that the above rule is incorrect as regards the 4th class of cases, the death there being death at any time as in the 2nd (i).

### V. *Lapse.*

Lapse, what is it?

If a devisee or legatee of real or personal estate dies in the lifetime of the testator, the devise or bequest fails, or, as it is usually expressed, lapses, except in the cases provided for by the Wills Act, which will be presently mentioned.

Destination of the subject of lapsed gifts.

With respect to the destination of lapsed devises and bequests, there was, under the law as it stood prior to the Wills Act, an important difference between real and personal estate. In the case of personal estate, the lapsed legacy fell into the residuary estate unless a contrary intention appeared by the will; but where land was the subject of the lapsed gift, it went to the heir-at-law of the testator.

Under Wills Act lapsed interests in real estate go to residuary devisee.

The 25th section of the Wills Act provides, that, unless a contrary intention shall appear by the will, such real estate, or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

What devises are residuary so as to include the subject of lapsed gifts.

The effect of this section is to assimilate the law with regard to the destination of lapsed interests in real and personal estates, and consequently the cases which have been decided in reference to personal estate will now be equally applicable to real estate. The question whether

(i) *Mahoney v. Burdett*, L. R. 7 H. L. 388; *Ingram v. Soutten*, 2b. 408. But see *Olivant v. Wright*, L.

R. I. C. D. 346, where the Court thought that the testator showed a contrary intention.

a devise or bequest of real or personal estate is residuary, so as to include lapsed interests, must of course depend upon the particular language used in each case. Words of exception will not of themselves prevent the gift from being residuary, as, for example, where there is a devise or bequest of particular lands or of a specific legacy, followed by a devise or bequest of all other the testator's estate, or all the testator's estate "except" what has been before given, the last-mentioned devise or bequest is residuary, and includes lapsed interests (*k*). In all such cases the question is whether the property is excepted in order to take it away under all circumstances and for all purposes from the person to whom the residue is given, or whether it is excepted merely for the purpose of giving it to somebody else. If the latter, and the gift to somebody else fails, the donees of all except this property, are entitled to take the whole (*l*).

It has been held that a devise of "the rest of my freehold lands" in a particular parish is not a residuary devise within the meaning of the Wills Act, and did not include the subject of a void devise in the same parish (*m*).

The 32nd section of the Wills Act provides, that "where any person to whom any real estate shall be devised for an estate tail, or an estate in *quasi* entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will." And the 33rd section provides, that "where any person being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person,

No lapse on death of tenant in tail, leaving inheritable issue,

or on death of devisee or legatee, being issue of testator, leaving issue.

(*k*) *Cogswell v. Armstrong*, 2 K. & J. 227; *Bernard v. Minshull*, 1 John. 276.

(*l*) *Bernard v. Minshull*, 1 John. 276, 299; see also *Cambridge v. Rous*, 8 Ves. 12, 25; *Easum v.*

*Appleford*, 5 My. & Cr. 61, 62; *Evans v. Jones*, 2 Col. C. C. 516; *Cogswell v. Armstrong*, 2 K. & J. 227.

(*m*) *Springett v. Jennings*, L. R. 10 Eq. 488; *ib.* 6 C. A. 333.



shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will."

Points  
decided  
with respect  
to 33rd  
section of  
Wills Act.

With regard to the construction of the 33rd section, the following points have been decided:—1. That it applies to appointments by will under a general power (*n*), but not to appointments under a power limited to particular objects (*o*). 2. That it applies to a case where the devisee or legatee is dead at the date of the will, leaving issue who survive the testator (*p*). 3. That it is not necessary, in order to prevent lapse, that the issue living at the decease of the testator should have been living when the legatee died. Thus, where a legacy was given to a daughter who died before the testatrix, leaving one child who also died before the testatrix, leaving a child who survived the testatrix, it was held that the legacy did not lapse (*q*). 4. That the section does not apply to gifts to a class (*r*). 5. That the section does not substitute for the deceased devisee or legatee the issue whose existence is the event or condition which prevents the lapse, but renders the subject of the gift the absolute property of the deceased devisee or legatee, and disposable by his will notwithstanding his death before the testator. Thus, if a child to whom a legacy is given makes a will containing a general or residuary bequest of his personal estate, and then dies before the original testator leaving issue who survives such testator, the legacy goes to the residuary legatee under the child's will (*s*), and probate duty is payable in respect thereof (*t*). But in a case where property was bequeathed to a daughter who died in the lifetime of the testator, but whose child and husband survived

(*n*) *Eccles v. Cheyne*, 2 K. & J. 676.

(*o*) *Griffiths v. Gale*, 12 Sim. 354.

(*p*) *Wisden v. Wisden*, 2 Sm. & Gif. 396.

(*q*) *Parker*, in the goods of, 31 L. J. Prob. 9.

(*r*) *Browne v. Hammond*, John.

210; *Cruse v. Howell*, 4 Drew, 215. See *In re Chaplin's Trusts*, 33 L. J. Ch. 183.

(*s*) *Johnson v. Johnson*, 3 Hare, 157.

(*t*) *Exors. of Perry v. the Queen*, L. R. 4 Exch. 27.

him, it was held by V.-C. Kindersley that such property was not within a covenant to settle property coming to the daughter during coverture (*u*). This decision seems contrary to the principle established by *Johnson v. Johnson* (*x*); his Honour, however, stated that he considered it to be quite in accordance with that case.

A gift to several persons as joint tenants, or to a class of persons, does not come within the operation of the doctrine of lapse unless all such joint tenants, or all the members constituting the class, die before the testator, as the gift takes effect in favour of those who survive (*y*); and where an estate is devised, subject to the payment of a sum thereout, the sum charged does not lapse by the death of the devisee of the estate in the testator's life (*z*).

Where a legacy is given to a person with a gift over if he dies before a given event, *e. g.*, before he attains twenty-one, and the legatee dies in the testator's lifetime, and *before* the given event, the bequest over will take effect; but if the legatee died in the testator's lifetime *after* the given event, the legacy lapses (*a*).

A gift of personal estate on a contingency, *e. g.* to A. if he attains twenty-one, carries with it the intermediate income (*b*); but a devise of real estate does not, and the intermediate rents go to the residuary devisee, and if there is no residuary devise, or if the devise in question is itself a residuary devise, to the heir-at-law (*c*). If, however, there is a devise and bequest of real and personal estate as a mixed fund, the testator shows an intention that the rule applicable to personal estate shall apply also to the real estate, and the intermediate rents will follow the *corpus* (*d*). In a case where resi-

No lapse on death of one of several joint tenants or of one of several members of a class.

A contingent gift of personal estate carries with it intermediate income, but a devise of real estate does not.

Where the real and personal estate is made a mixed fund, the rule as to personality applies to the real estate also.

(*u*) *Pearce v. Graham*, 1 N. R. 507.

(*x*) *Ubi supra*.

(*y*) 1 Jarm. on Wills, 316; Leigh v. Leigh, 23 L. J. Ch. 287.

(*z*) *Oke v. Heath*, 1 Ves. Sen. 135.

(*a*) *Walker v. Main*, 1 J. & W. 1; *Humphreys v. Howes*, 1 R. & M. 639; *Humberstone v. Stanton*, 1 V. & B. 385. If a bequest of a sum is made to A. for life with

remainder to B. to be paid to him at twenty-one, with a gift over in case of his death before the same shall become payable, and B. attains twenty-one, and dies before A., the legacy passes to the representatives of B. *Walker v. Main*, *ubi supra*; *Jones v. Jones*, 13 Sim. 561.

(*b*) *Green v. Ekins*, 2 Atk. 473.

(*c*) *Stephens v. Stephens*, Ca. temp. Talbot, 228.

(*d*) *Genery v. Fitzgerald*, Jac. 468.

duary real estate was devised to the second and other sons of A. (who was living, and had only one son, B.), and their issue in tail, with remainder to B. for life and his issue in tail, and the residuary personal estate was given upon trust to lay it out on the purchase of real estate to be settled to the same uses, it was held that during the suspense of vesting, the intermediate rents of the real estate belonged to the heir-at-law, and the income of the personal estate (including the income arising from the investment of such income) was liable to be laid out in the purchase of land (e).

VI. *For what period the vesting of property given by will may be postponed or income may be accumulated, having regard to the rule against perpetuities and the Thellusson Act.*

Rule  
against per-  
petuities.

Instances of  
application of rule  
to real  
estate.

Devise to  
unborn

When, after the passing of the statute of uses, springing or secondary uses and executory devises were admitted by the Courts as legal limitations, it became necessary in order to prevent land from becoming inalienable, to confine them within certain bounds. It has been, therefore, settled that the event on which an executory devise is to take effect must be such as, if it happens at all, will necessarily happen within the space of a life or lives in being, and twenty-one years and some months over from the death of the testator (f). Thus, if lands are devised to A. in fee simple, with an executory devise over in case A. or any of his heirs shall do a particular act, the devise over is void. But if lands are devised to A. in tail, with an executory devise over in case A., or the heirs of his body, shall do a particular act, the executory devise is not void, because A. being tenant in tail can at any time bar the entail and the executory devise, so that the property is not in fact tied up, and consequently the rule is not transgressed (g).

Again, a devise to an unborn person for life, with

(e) *Hodgson v. Bective*, 1 H. & M. 376; 33 L. J. Ch. 601. See also *Wade Gery v. Handley*, L. R. 1 C. D. 653.

(f) *Fearne on Cont. Remrs.* 429;

*Cadell v. Palmer*, 7 Bl. 202.

(g) See *Butler's Note to Co. Lit.* 271 b. See also *Heasman v. Pearce*, L. R. 7 C. A. 275.

remainder to the children of such unborn person, is void (*h*).

The rule against perpetuities is equally applicable to gifts of personal estate. It is therefore necessary, in framing all such gifts, to take care that the absolute vesting of them is not postponed beyond the period allowed, viz., a life or lives in being and twenty-one years afterwards.

Thus, if a legacy is given in trust for A. for life and after his death for all his children who shall attain twenty-two, the gift is void, because it is possible that A. may die leaving a child just born, and in such case nearly twenty-two years beyond the life of A. must, or *may*, happen before the legacy becomes absolutely vested (*i*). And a gift is void where the vesting is postponed for more than twenty-one years, without reference to a life or lives. Thus, where a legacy was given to all the children of A. who should be living at the end of twenty-eight years from the testator's death, the gift was held void (*k*).

All limitations ulterior to or expectant on a devise, which is void for remoteness are void also (*l*).

In exercising by will powers of appointment in favour of particular objects referred to in the power, it is necessary to bear in mind that the rule in question is to be applied as if the appointment was contained in the instrument creating the power (*m*).

Previously to the passing of the Act about to be mentioned, the income of property might be directed to be accumulated for the whole period permitted by the rule against perpetuities, as was decided in the great case *Thellusson v. Woodford* (*n*).

The 39 & 40 Geo. 3, c. 98 (commonly called the Thellusson Act), prohibits any disposition by deed, will, or otherwise of real or personal property, so that the rents, or produce thereof shall be accumulated for any longer term than the life or lives of the grantor or settlor, or the term of twenty-one years from the death

person for life with remainder to children of such person.

Rule extends to personality.

Instances of application of rule to personality.

How rule to be applied, where will exercises a special power

For what period income might have been accumulated before Thellusson Act.

Provisions of Thellusson Act.

(*h*) *Duke of Marlborough v. Earl Godolphin*, 1 Ed. 404. See *Knap-ping v. Tomlinson*, 34 L. J. Ch. 3.

(*i*) *Thomas v. Wilberforce*, 31 Beav. 299.

(*k*) *Palmer v. Holford*, 4 Russ. 403.

(*l*) *Jarm. on Wills*, 264.

(*m*) 1 Sug. Pow. 474.

(*n*) 4 Ves. 227.

of the grantor, settlor, or testator, *or* during the minority or respective minorities of any person or persons who shall be living or *in ventre sa mère* at the time of the death of the settlor, or testator, *or* during the minority or respective minorities only of any person or persons, who, under the uses or trusts of the instrument directing such accumulation, would for the time being, if of full age, be entitled unto the rents, or annual produce so directed to be accumulated; and every direction to accumulate otherwise than as aforesaid is null and void, and the rents and produce so directed to be accumulated are to go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed (o). But it is provided that the Act shall not extend to any provision for payment of debts of any grantor, settlor, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements (p).

If a testator directs income to be accumulated for a period exceeding the time allowed by the Act, the accumulation will be allowed *pro tanto*, and will be void only for the excess (q).

Whether  
Act applies  
to accumula-  
tion arising  
by operation  
of law.

The question has sometimes arisen whether the Thellusson Act applies to cases where there is no express trust for accumulation, but there is in the will an executory devise of such a nature that accumulation becomes necessary during the suspense of vesting.

In *Macdonald v. Bryce* (r) property was given to A. (the eldest son of B.), and on his death, under twenty-one, to the other sons of B. in succession, and failing them, to others. A. died under twenty-one, and B. had no other son, but was still living at the end of twenty-one years from the death of A. It was held by Lord Langdale, that the Thellusson Act prevented accumulation during the rest of B.'s life, and that the income

(o) Sec. 1.

(p) Sec. 2.

(q) *Griffiths v. Vere*, 9 Ves. 127.

(r) 2 Keen, 276.

during that period was undisposed of and passed to the testator's next of kin. This decision was disapproved of by Vice-Chancellor Shadwell in the case of *Elborne v. Goode* (s), on the ground that, in the opinion of the Vice-Chancellor, the Act does not apply to cases where the accumulation arises by operation of law, but only to cases where there is an express trust for accumulation. On the other hand, Lord Cranworth, in *Tench v. Cheese* (t), thought that if a testator directs that to be done which, as a necessary consequence, leads to an indefinite accumulation, he must, within the meaning of the Act, be taken to have directed accumulation (u).

It will be observed that the Act simply makes void the direction to accumulate, and leaves the rents to go to such person, &c., as would have been entitled thereto if such accumulation had not been directed. Where, then, a residue is given upon trust to accumulate the income for the life of A., or any other period, such income will, after the expiration of the twenty-one years and during the rest of the period of accumulation directed by the will, go to the next of kin or heir-at-law of the testator, according to the nature of the property (v). But, in a case where a testator directed the rents of an estate to be accumulated until a certain sum was raised, and subject to such direction the estate was devised to several persons in succession, it was held that the direction to accumulate operated as a charge on the successive estates, and that accumulations made after twenty-one years from the testator's death belonged not to his heir-at-law, but to the persons entitled to the rents and profits under the devise (w).

The 2nd section of the Act has given rise to much litigation, particularly with regard to the question, what is a *provision for raising portions*, &c., within the second exception in that section? In *Barrington v. Liddell* (x), family estates were settled upon the

Destination of income directed to be accumulated beyond period allowed.

What is a provision for raising portions within the Act.

(s) 14 Sim. 165.

(t) 6 De G. M. & G. 453.

(u) See also *Morgan v. Morgan*, 4 De G. & Sm. 164; *Mathews v. Keble*, L. R. 4 Eq. 467.

(v) *Eyre v. Marsdon*, 2 Keen, 276; *Macdonald v. Bryce*, *ubi supra*.

See also *Smith v. Lomas*, 33 L. J. Ch. 579; *Green v. Gascoyne*, 34 L. J. Ch. 268.

(w) *In re Clulow's Trust*, 1 J. & H. 639.

(x) 2 De G. M. & G. 480.

marriage of A. to the use of himself for life, with remainders over, including a term for raising portions for his younger children, amounting, in the events which happened, to £40,000. A great uncle of A., by his will, after making a provision for A., gave £15,000 to trustees on trust to invest it and accumulate the income during the life of A., and after his death to apply the accumulations in satisfaction of the portions and in exoneration of the settled estates. It was held by Lord St. Leonards that the case was within the exception of the 2nd section, and that the trust for accumulation was consequently good beyond the twenty-one years. His Lordship considered that, by the terms of the first exception in the 2nd section, a grantor, &c., may make provision for the payment not only of his own debts but of the debts of any other person, and that the provision for raising portions for any child, &c., mentioned in the 2nd exception, includes portions already created, and enables a grantor, &c., to make the same provision for the children of other persons as for his own, except that, as to the former, they must be the children of persons who take an interest under such conveyance, settlement, or devise, as is referred to in the clause. He also considered that the words "such conveyance, settlement, or devise," relate to the instrument by which the grantor, &c., has made a provision for raising portions, but it is not necessary that the gift to the parent should be in the very clause of the will which creates the provision for the children, or that it should be an interest in the very property directed to be accumulated.

A direction to accumulate the residue of a testator's estate for the benefit of an infant child is not a provision for raising portions for such child within the meaning of the exception in the Act (y); and it has been held by Kindersley, V.-C., that a legacy to a parent for life, and after his decease to his children, is not a provision for raising portions (z), but Vice-Chan-

(y) *Edwards v. Tuck*, 3 De G. M. & G. 40; *Bourne v. Buckton*, 2 Sim. N. S. 91; see also *Drewett v. Pollard*, 27 Beav. 196; *Jones v. Maggs*,

9 Hare, 605.

(z) *Watt v. Wood*, 2 Drew. & Sm. 56.

cellor Stuart, in another case (*a*), held the contrary, thinking that in so doing he was following *Barrington v. Liddell* (*b*).

A direction to accumulate rents and profits for an indefinite period for the purpose of paying debts, with a devise of the land (subject to such trust) to uses in strict settlement, does not contravene the rule against perpetuities, because, so soon as the fee simple vests in possession under the limitations, the owner can put an end to the accumulations (*c*), and a trust of this nature is excepted by the 2nd section from the operation of the *Thellusson Act*. But it was held in a recent case, that if the creditor insists on and obtains payment at once out of the *corpus* of the estate, under a devise in an administration suit or otherwise, the tenant in remainder cannot require the accumulation to go on so as to recoup the *corpus* out of the income of the remaining property, and the V.-C. intimated his opinion that if the will had contained a clause expressly directing such recouping, the clause would have been void (*d*).

As to the validity of accumulations to pay debts.

A contingent liability, under a covenant entered into by the testator, is a debt within the meaning of the exception in the 2nd section, and may be provided for by a direction to create a sinking fund without any reference to the period of accumulation allowed by the *Act* (*e*).

What is a provision for payment of debts within the *Act*.

## VII. *Gifts in mortmain, and particularly gifts to charities.*

Every devise of land to a corporation is void unless such corporation is authorised to hold land in mortmain by license from the Crown or Act of Parliament (*f*).

Devise of lands to corporation void.

Under the 9 Geo. 2, c. 36, sects. 1 and 2, any conveyance, settlement, or gift of land, or of any interest therein, or of any incumbrance affecting land, or of any

9 Geo. 2, c. 36.

(*a*) *Middleton v. Losh*, 1 S. & G. 66.

(*b*) *Ubi supra*.

(*c*) *Bateman v. Hotchkin*, 10 Beav. 426.

(*d*) *Tewart v. Lawson*, L. R. 18 Eq. 490.

(*e*) *Varlo v. Faden*, 27 Beav. 255 ; s. c. 1 De G. F. & J. 211.

(*f*) 1 Jarm. on Wills, 58.



moneys to be laid out in or to be raised by the sale of land, for any charitable purpose, must be made by deed sealed and delivered in the presence of two witnesses, and must be enrolled in chancery within six months after its execution (*g*), and such conveyance &c., must be made to take effect in possession for the charitable use intended immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, or limitation for the benefit of the donor or grantor (*h*). And if the conveyance, &c., is not made for a valuable consideration, the death of the donor within twelve calendar months after the execution of the deed renders it void. The consideration referred to in the 2nd section must be paid

(*g*) When lands are in mortmain, on subsequent dealings with the property the deeds need not be enrolled. (*Ashton v. Jones*, 6 Jur. N. S. 970).

(*h*) The object of the 9 Geo. 2, c. 36, was to prevent a reservation of some substantial benefit to the donor himself. Therefore, a trust or condition for the keeping up a tomb for the grantor and his family is not a reservation within the meaning of the Act. (*Doe d. Thompson v. Pitcher*; 3 Mau. & Sel. 407.) And in a case where a person who had erected a chapel conveyed it to trustees for charitable purposes, it was held that the reservation of a power to the grantor during his life to appoint the ministers and to make any further regulations for the better management of the charity was good, for the powers were not reservations for the benefit of the grantor (*Grievs v. Case*, 2 Cox, 301).

The 24 Vict. c. 9, contains certain provisions remedying certain defects, and meeting certain difficulties in reference to past assurances of hereditaments for charitable uses, and also provides that no future assurance for charitable uses shall be rendered void by reason of the deed not being indented, or of its containing any grant or reservation of a nominal rent, or of mines, or any covenants or provisions for the erection or repair of buildings, the formation

or repair of streets, &c., or for the use and enjoyment as well of the hereditaments comprised in such assurance as of any other neighbouring hereditaments, or any right of entry on non-payment on such rent, or on breach of any such covenants or provisions, or any stipulations of the like nature for the benefit of the grantor, nor (in case of the assurance of copyholds) by reason of the same not being made by deed, nor in the case of such assurances made *bond fide* on a sale for a valuable consideration by reason of such consideration consisting wholly or in part of a rent-charge or other annual payment reserved to the vendor or any other person, with or without a right of re-entry for non-payment thereof, so that in all such reservations the same benefits shall be reserved for the representatives of the grantor as for himself (sect. 1). And the 27 Vict. c. 13, s. 4, enacts that every full and *bond fide* valuable consideration which shall consist either wholly or partly of a rent or other annual payment reserved or made payable to the vendor or grantor, or to any other person shall, for the purposes of the Mortmain Act, be as valid and have the same force and effect as if such consideration had been a sum of money paid at or before the making of such conveyance without fraud or collusion. See also 25 & 26 Vict. c. 17.

by the person for whose benefit the conveyance is made (*i*).

But the Act makes an exception as to gifts in favour of the two English Universities, and the colleges of Eton, Winchester, and Westminster, for the support and maintenance of the scholars only upon the foundation, and it does not extend to Scotland (*k*). And other partial exceptions have been made by various Acts of Parliament.

Exception  
in favour of  
Universi-  
ties.

It is evident that under the provisions of the above Act every testamentary disposition of land for a charitable use is void (*l*).

A bequest of money secured on turnpike tolls (*m*), or on the poor and county rates (*n*), or of the lien of a vendor for his purchase money (*o*), or of money due on mortgage of land, or of interest on such money (*p*), including an equitable mortgage by deposit of deeds (*q*), or of the proceeds of growing crops (*r*), is void. So a bequest of money charged on the rates and tolls raised under an Act for improving the navigation, and which by the Act are not declared to be personal estate, has been held to be void (*s*). On the other hand, the shares in gas, canal, dock, or railway companies possessing land for the purposes of their undertaking (*t*), or of land or mining companies (*u*), are not interests in land within the meaning of the Mortmain Act, whether the particular Act incorporating the company does or does not contain a clause providing that the shares shall be personal estate, the test being, whether the share can, under any ordinary state of circumstances, result to the holder in the shape of land.

Instances  
of void  
bequests  
under Act.

Instances  
of valid  
bequests.

(*i*) *Doe d. Preece v. Howells*, 2 B. & Ad. 744.

(*k*) Sects. 4, 6.

(*l*) *Paice v. Archbishop of Canterbury*, 14 Ves. 364; *Attorney-General v. Weymouth*, 1 Ambl. 20.

(*m*) *Knapp v. Williams*, 4 Ves. 430, n.

(*n*) *Finch v. Squire*, 10 Ves. 41.

(*o*) *Harrison v. Harrison*, 1 Russ. & Myl. 71.

(*p*) *White v. Evans*, 4 Ves. 21.

(*q*) *Waterhouse v. Holmes*, 2 Sim. 162.

(*r*) *Symons v. Marine Society*, 2 Giff. 325.

(*s*) *Ion v. Ashton*, 28 Beav. 379.

It is doubtful whether this case does not conflict with some of the recent decisions.

(*t*) *Myers v. Perigal*, 2 De G. M. & G. 599; *Edwards v. Hall*, 11 Hare, 13; 6 De G., M. & G. 74; see also *Taylor v. Linley*, 2 De G. F. & J. 84.

(*u*) *Hayter v. Tucker*, 4 K. & J. 243; *Entwistle v. Davis*, L. R. 4 Eq. 272.

Whether the debentures of railway and other companies, when in the form of a mortgage of the undertaking according to Schedule C. of the Companies Clauses Act, 1845, are within the Act is not clearly settled. The distinction drawn in some of the cases between a share and a debenture in this respect seems to rest on no solid foundation, and the balance of modern decisions is in favour of the opinion that a debenture like a share is not an interest in land so as to be within the Act (x).

Policies of  
assurance.

Again, policies of assurance by which the directors engage "to pay out of the funds," or "that the funds shall be liable," or "that a share of the funds shall be paid," are not so connected with land as to render a testamentary gift of them to a charity invalid, although the assets of the assurance company may consist partly of real estate (y).

The question has often arisen whether the interest of a testator in the proceeds of real estate directed to be sold by the will of a former testator, but which in fact remains unsold at the death of the second testator, is to be considered an interest in land within the meaning of the Mortmain Act. It seems to be now settled that it is to be so treated, whether the second testator was entitled to the whole proceeds or only to a share therein (z).

Gift to a  
charity to be  
applied in  
building  
void, unless  
on land  
already in  
mortmain.

A gift of money to a charity to be applied in building is *prima facie* void, as involving the purchase of land for a site (a).

But there is no objection to a bequest of money for the erection or repair of buildings on land already in

(x) Holdsworth v. Davenport, L. R. 3 C. D. 185; *Re Mitchell*, L. R. 6 C. D. 655. See, however, *Attree v. Hawe*, W. N. 1877, p. 227, in which Hall, V.-C., held that debenture stock of a railway company was within the Act. It is apprehended that there is no distinction as regards the operation of the Act between a debenture and debenture stock, and consequently the last-mentioned case conflicts with those first above mentioned.

(y) *March v. Attorney-General*,

5 Beav. 433.

(z) *Brook v. Badley*, L. R. 3 C. A. 672; *Cadbury v. Smith*, *ib.* 9 Eq. 37. The cases of *Shadbolt v. Thornton*, 17 Sim. 49, and *March v. Attorney-General*, 2 J. & H. 61, are apparently overruled.

(a) *Attorney-General v. Hyde*, 2 Ambl. 750; *Attorney-General v. Nash*, 3 B. C. C. 588; *Trye v. Corporation of Gloucester*, 14 Beav. 173; *Pritchard v. Arbouin*, 3 Russ. 456; *Giblett v. Hobson*, 5 Sim. 651; 3 M. & K. 517.

mortmain (*b*), or for the endowment of churches or chapels in existence (*c*). Where there is land already in mortmain on which the buildings can be erected, it is sometimes difficult to ascertain whether a testator has sufficiently pointed to such land so as to render the gift good. In a case where a legacy was given to build a parsonage-house, and it appeared that there was glebe on which it could be erected, the gift was held good (*d*). In another case a gift of money to the trustees of a Wesleyan chapel to be applied towards the erection of a new chapel was held valid, there being land duly vested in the trustees at the date of the will on which a new chapel could be built (*e*); but in a similar case, the contrary was decided by another judge, on the ground that such land was not distinctly pointed out (*f*).

The validity of a gift of money to "establish" a charity seems to depend on whether the charity can be established without the purchase of land. Thus, in *Attorney-General v. Williams* (*g*), a gift of personalty to establish a school was held good, because the master might teach in his own house or in the church; and in *Hartshorne v. Nicholson* (*h*), a similar bequest was supported on the ground that a school might be established by hiring a room for the purpose. But in the case of *Attorney-General v. Hull* (*i*), a similar bequest was held to be void, because, taking the whole of the will together, the Court thought it was clearly the intention of the testator that land should be purchased (*k*). And in other cases, gifts to establish an hospital (*l*) or slaughter-houses (*m*) have been held void.

In order to render a gift invalid under the statute, To render charitable

(*b*) *Attorney-General v. Davies*, 9 Ves. 535; *Attorney-General v. Munby*, 1 Mer. 327; *Attorney-General v. Chester*, 1 Bro. C. C. 444; *Fisher v. Brierly*, 1 De G. F. & J. 643; *In re Hawkins*, 34 L. J. Ch. 80.

(*c*) *Edwards v. Hall*, *ubi supra*.

(*d*) *Sewell v. Crewe Read*, L. R. 3 Eq. 60. See also *Cresswell v. Cresswell*, *ib.* 6 Eq. 69.

(*e*) *Booth v. Carter*, L. R. 3 Eq. 757.

(*f*) *In re Watmough's Trusts*, L. R. 8 Eq. 272.

(*g*) 4 B. C. C. 526.

(*h*) 26 Beav. 59.

(*i*) 9 Hare, 647.

(*k*) See also *Dunn v. Bownas*, 1 K. & J. 596; *Hopkins v. Philips*, 7 Jur. N. S. 1274; *Tatham v. Drummond*, 34 L. J. Ch. 1.

(*l*) *Dunn v. Bownas*, 1 K. & J. 596.

(*m*) *Tatham v. Drummond*, 34 L. J. Ch. 1.

Gifts to  
"establish"  
a charity,  
when valid.

gifts void,  
it is not  
sufficient  
that trustees  
may apply it  
illegally.

it is not sufficient that the trustees *may* consistently with their trust apply the fund in a manner which would be illegal : the question in every case is, whether they *must* do so (*n*), for where trustees have a discretion to apply the money either in a way which the law allows, or in one which the law disallows, the presumption ought to be that the discretion will be exercised in the former mode (*o*).

Thus, if the trustees have an *option* to lay out the money in land *or* in investments not savouring of realty, the bequest would be good (*p*). And in a case where a sum of money was bequeathed to the mayor and jurats of a town to be laid out by them in such manner as they should think proper for the benefit and ornament of the town, the gift was supported although the discretion of the trustees *might* extend to the application of the fund in violation of the statute (*q*). And on the same principle a bequest of money to be applied in aid of erecting *or* endowing a church has been held good (*r*).

Bequest for  
building on  
condition  
that a site  
is provided,  
whether  
valid.

A bequest of money to a charitable society for building almshouses on condition that the society will procure lands for a site, is *in effect* a bequest for the purchase of land, and therefore void (*s*) ; but a bequest of money to be applied in erecting an almshouse provided that some person shall within a limited time give a piece of land as a site is good ; and it is not a sufficient objection to a gift to a charity that its tendency is to bring lands into mortmain (*t*). And a bequest for the endowment of a future church, or to build almshouses as soon as land should be given for the purpose is a valid bequest, and the Court will direct an enquiry whether the fund can be applied for the purpose (*u*).

(*n*) *Carter v. Green*, 3 K. & J. 591.  
(*o*) *Mayor of Faversham v. Ryder*,  
5 De G. M. & G. 350.

(*p*) *Curtis v. Hutton*, 14 Ves. 537 ;  
*Soresby v. Hollins*, 9 Mod. 221 ;  
*Grimmett v. Grimmett*, 1 Ambl. 211 ;  
*Dent v. Allcroft*, 30 Beav. 335.

(*q*) *Mayor of Faversham v. Ryder*,  
5 De G., M. & G. 350.

(*r*) *Sinnett v. Herbert*, L. R. 7  
Ch. 232.

(*s*) *Attorney-General v. Davies*,  
9 Ves. 535.

(*t*) *Philpot v. St. George's Hos-*  
*pital*, 5 H. of L. Ca. 338. This case  
seems virtually to overrule *Trye v.*  
*Corporation of Gloucester*, 14 Beav.  
173, so far at all events as to the  
principles on which the Master of  
the Rolls in the latter case grounded  
his decision ; see also *Cawood v.*  
*Thompson*, 22 L. J. Ch. 835.

(*u*) *Sinnett v. Herbert*, L. R. 7  
Ch. 232 ; *Chamberlayne v. Brockett*,  
*ib.* 8 Ch. 206 ; *Littledale v. Bicker-*  
*steth*, W. N. 1876, p. 32.

If a testator bequeaths a general legacy to a charity without specifying the fund out of which it is to be paid, the Court will not marshal the assets in favour of such legacy, but such proportion of the legacy would fail as the prohibited portion of the testator's property bears to the *pure* personalty (*x*).

Assets not marshalled in favour of a charity.

If land is directed to be sold for the benefit of a charity, and the gift is illegal, the land goes to the heir-at-law or the residuary devisee (*y*). If the bequest be of money to be laid out in land, the legacy fails in favour of the next of kin and not of the heir (*z*).

To whom the subject of a void charitable gift goes.

In order to constitute a secret trust for a charity as to property given by will so as to render it void, there must have been in the lifetime of the testator an express or implied promise or assent on the part of the legatee to carry out the testator's intention (*a*).

What constitutes a secret trust for a charity.

All funds given by a private person for any legal, public, or general purpose are to be considered charitable funds (*b*). Thus, a gift to the Royal Geographical Society is a charitable gift (*c*), but a deed of conveyance of land to trustees for the purpose of building a workhouse has been held not to be within the Statute of Mortmain, on the ground that the conveyance was made under an Act of Parliament, which enabled the grantee to sell again, and therefore there was no permanent dedication to a charitable use (*d*).

What are charitable funds.

A trust or direction to keep in repair a family tomb in the churchyard is not a charitable purpose, and is therefore not forbidden by the Mortmain Act (*e*). But if such a trust transgresses the rule against perpetuities, it is void on that account (*f*).

A trust for the perpetual repair of a monument in

(*x*) *Williams v. Kershaw*, 1 Keen, 274, n.; *Robinson v. Geldard*, 3 Mac. & Gor. 735.

(*y*) *Attorney-General v. Lord Weymouth*, Ambl. 20.

(*z*) *Cogan v. Stephens*, 1 Beav. 482, n.

(*a*) *Lomax v. Ripley*, 24 L. J. Ch. 254; *Wallgrave v. Tebbs*, 2 K. & J. 313; *Tee v. Ferris*, 2 K. & J. 357; see also *Moss v. Cooper*, 1 J. & H. 352; *Jones v. Badley*, L. R. 3 Ch. 362.

(*b*) *Re Leach*, Sir J., in *Attorney-*

*General v. Heelis*, 2 S. & S. 76.

(*c*) *Beaumont v. Oliveira*, L. R. 6 Eq. 534.

(*d*) *Barnaby v. Bardsley*, 4 H. & N. 690; 28 L. J. Ex. 326.

(*e*) *Lloyd v. Lloyd*, 2 Sim. N. S. 255.

(*f*) *Lloyd v. Lloyd*, *ubi supra*; *Rickard v. Robson*, 31 Beav. 244; *Thomson v. Shakespeare*, John. 612; 1 De G., F. & J. 399; *Fowler v. Fowler*, 33 Beav. 616; *Dawson v. Small*, 18 Eq. 114.

the church itself, is a charitable trust, and within the Mortmain Act, and if of pure personalty, is good (*g*).

When, by a private Act of Parliament, a charitable institution was incorporated and empowered to purchase, take in reserve, and hold any lands not exceeding a certain quantity without incurring any of the penalties of the Statute of Mortmain, it was held that the charity could not take a bequest of land by will (*h*), but the contrary was held in another case where the incorporating act expressly authorised the charity to acquire lands by will (*i*).

Recent Act enabling charitable funds to be invested in real securities.

By a recent Act (33 & 34 Vict. c. 34), trustees of charitable funds are authorised to invest on real securities without infringing the Statute of Mortmain, subject to a proviso that where the equity of redemption in the property comprised in any such security becomes liable to foreclosure, the property is to be sold. It is conceived that this Act does not authorise a bequest to charity of money invested on real security at the testator's death.

### VIII. *Conversion.*

Rule as to conversion with regard to perishable property.

Where a testator gives his personal estate or the residue of his personal estate in general terms to A. for life, with remainder over, the trustees are bound to convert into money all such property as is of a perishable or wasting nature, such as leaseholds, long annuities, &c.; the principle being that it is *prima facie* to be presumed that a testator intends that the same property which is given to the tenant for life shall go to those in remainder, and in order to effect such intention, wasting property must be turned into permanent property (*k*). But if it appear from the context of the will that the testator intended that the tenant for life should enjoy the property in *specie*, such indication of intention takes the case out of the general rule. Whether such an intention sufficiently appears is frequently a difficult question. A direction out of the rents to renew lease-

Instances where it has been held that leaseholds, &c., shall be enjoyed in *specie*.

(*g*) *Hoare v. Osborne*, 1 L. R. Eq. 585.

(*h*) *Nethersole v. School for Indigent Blind*, L. R. 11 Eq. 1; *Chester v. Chester*, *ib.* 12 Eq. 444.

(*i*) *Perring v. Trail*, L. R. 18 Eq. 88. See *Luckraft v. Pridham*, L. R. 6 C. D. 205.

(*k*) *Howe v. Earl of Dartmouth*, 7 Ves. 137.

holds and keep houses in repair (*l*) ; a trust to sell the property on the decease of the tenant for life (*m*), or only in a given event (*n*) ; a direction not to sell without the consent of all parties (*o*), have been held sufficient evidence of the testator's intention that leaseholds should be enjoyed in *specie*. In some cases, again, where the gift of the residue has been distinguished by a mention of particular parts of the testator's property, or where the property has been pointed to specifically in the gift over, a similar intention has been inferred as to the property so specified (*p*).

In *Pickup v. Atkinson* (*q*) it was held that a bequest of the *rents*, profits, dividends, and interest of the residue in general terms to the tenant for life, was not of itself sufficient to entitle him to enjoy leaseholds in *specie*, but in other cases the contrary seems to have been decided (*r*).

A bequest of *rents* to tenant for life, whether sufficient to entitle him to enjoy in *specie*.

Perishable and wearing out property in the strict sense of the term is not, however, the only property to which the rule as to conversion applies. Where a testator bequeaths the residue of his personal estate to several persons in succession, it is the duty of the executors to convert the whole of such estate not consisting of investments authorised by the will or recognised by the Court of Chancery as of a permanent nature. Until lately the only investments so recognised were £3 per Cent. Annuities and approved real securities (*s*), but by the joint operation of the 22 & 23 Vict. c. 35, sect. 32, 23 & 24 Vict. c. 38, sects. 10 and 11, and 30 & 31 Vict.

Rule as to conversion applies to all the personal estate not consisting of authorised investments.

(*l*) *Crowe v. Crisford*, 17 Beav. 507.  
(*m*) *Alcock v. Sloper*, 2 M. & K. 699.

(*n*) *Daniel v. Warren*, 2 Y. & C. C. C. 290.

(*o*) *Hinves v. Hinves*, 3 Hare, 609 ; see also *Burton v. Mount*, 2 De G. & Sm. 383.

(*p*) *Bethune v. Kennedy*, 1 M. & C. 114 ; *Vaughan v. Buck*, 1 Ph. 75 ; *Blann v. Bell*, 21 L. J. Ch. 811 ; *Bowden v. Bowden*, 17 Sim. 65 ; *Collins v. Collins*, 2 M. & K. 703 ; *Harris v. Poyner*, 1 Drew. 174 ; *Simpson v. Lester*, 4 Jur. N. S. 1269.

(*q*) 4 Hare, 624.

(*r*) *Goodenough v. Tremamondo*.

2 Beav. 512 ; *Crowe v. Crisford*, 17 Beav. 509 ; *Wearing v. Wearing*, 23 Beav. 99. And see generally on this subject, in addition to the cases already cited, *Sutherland v. Cooke*, 1 Col. C. C. 498 ; *Mills v. Mills*, 7 Sim. 501 ; *Morgan v. Morgan*, 14 Beav. 72 ; *Hood v. Clapham*, 19 Beav. 90 ; *Hubbard v. Young*, 10 Beav. 203 ; *Thornton v. Ellis*, 15 Beav. 193 ; *Jebb v. Tugwell*, 20 Beav. 84 ; *Skirving v. Williams*, 24 Beav. 275 ; *Chambers v. Chambers*, 15 Sim. 183 ; *Boys v. Boys*, 28 Beav. 436 ; *Vachell v. Roberts*, 32 Beav. 140.

(*s*) *Howe v. Earl of Dartmouth*, *ubi supra*.



c. 132, and the Order in Chancery of the 1st February, 1861 (*t*), Bank Stock, East India Stock and certain other securities are now placed for trust purposes on the same footing as £3 per Cent. Annuities, and an executor may therefore, in the absence of any contrary direction in the will, retain unconverted such part of the testator's estate as may consist of any of the investments thus authorised by statute (*u*).

Executors are allowed a year from the testator's death for the realising of his property, and the conversion of such part as ought to be converted. If they neglect this duty and any loss arises, their liability is as follows: If by the terms of their trust they are authorised to invest in real as well as on government securities, they are liable for the money which would have been produced by a conversion at the end of a year from the testator's death, with interest at 4 per cent. (*x*). If by the terms of the will the trustees are bound to invest in the 3 per Cents. only, they are liable for the amount of 3 per Cents. which would have been produced by a conversion and investment at the end of such first year, together with interest at 3 per cent. on the same amount from that time (*y*). And in the application of the above principle, it is conceived that the statutory powers of investment must now be taken into account, so that an executor will be considered as having a right to invest on real securities in all cases in which he is not expressly forbidden to do so.

If a gain arises from the neglect to convert at the proper time, the *cestuis que trust* are entitled to such

(*t*) See *supra*, p. 135.

(*u*) *Hume v. Richardson*, 31 Law J. Ch. 713.

(*x*) *Robinson v. Robinson*, 1 De G. M. & G. 247. This case at first sight seems to conflict with *Dimes v. Scott*, *ubi infra*. In the latter case the trustees were authorised to invest in government or real securities, and it was nevertheless held that a conversion into the 3 per Cents. must be supposed, and that the tenant for life was entitled to interest on that footing only. But the point was not argued, for according to the price of Consols at

that time the tenant for life would get more than 4 per cent. by the plan which was followed. (See note to *Brown v. Gellatly*, 2 L. R. C. A. 756.) *Brown v. Gellatly* also seems at first sight to be contrary to *Robinson v. Robinson*, but this is not really the case, if (as may be gathered from the reported judgment of Cairns, L. J.) the question decided, as to the unauthorised investment, was confined to the rate of interest to be allowed to the tenant for life during the first year after the testator's death.

(*y*) *Dimes v. Scott*, 4 Russ. 195.

gain, and where there is a tenant for life and remainderman of the residuary estate their respective rights are thus adjusted ; the tenant for life receives such interest only as he would have received if the conversion and investment had been made at the end of the first year, *viz.*, 4 per cent. on the principal money, which would have been produced by such conversion, where an investment in real security is permitted ; and 3 per cent. on the stock which such money would have purchased, where the terms of the will require an investment in 3 per Cent. stock ; and the excess of income actually produced by the unconverted fund is added to the *corpus*, and with such *corpus* belongs to the remainderman (z).

It was for some time unsettled what was the right of the tenant for life of the residue during the first year from the testator's death, and after several conflicting decisions the point has been thus settled, *viz.*, that the tenant for life is entitled, during such first year, as well as afterwards, to the whole income derived from such part of the testator's estate as is properly invested (a), but that as to such part of the estate as is not so invested he is entitled during the first year to an annual sum equal to 3 per cent. on the stock, which would have been purchased with the unconverted property if such conversion had been made at the end of the year, and the excess of income accruing from the unconverted property is to be deemed *corpus* (b). The following exception has, however, been made, *viz.* : that if the property is so circumstanced as that it is producing a large annual income, and is secure, but cannot be immediately converted without a loss to the estate, then a value in money will be set upon it, and the tenant for life will be allowed 4 per cent. on such value from the testator's death, the excess of income beyond 4 per cent. being treated as *corpus* (c).

(z) *Dimes v. Scott*, 4 Russ. 195 ; *Brown v. Gellatly*, 2 L. R. Ch. App. 752.

(a) *Angerstein v. Martin*, T. & R. 232 ; *Hewitt v. Morris*, T. & R. 241 ; *Taylor v. Clark*, 1 Hare, 161.

(b) *Dimes v. Scott*, 4 Russ. 195 ; *Taylor v. Clark*, 1 Hare, 161 ; *Morgan v. Morgan*, 14 Beav. 72 ; *Brown*

*c. Gellatly*, 2 L. R. Ch. App. 752. The cases of *Douglas v. Congreve*, 1 Keen, 410, and *La Terriere v. Bulmer*, 2 Sim. 18, must be considered as overruled, so far as they are not in accordance with the principle stated in the text.

(c) *Gibson v. Bott*, 7 Ves. 89 ; *Caldecott v. Caldecott*, 1 Y. & C. C.

Application  
of rule to  
reversionary  
property.

The rule as to conversion is to be applied for the benefit of as well as against the tenant for life, and consequently extends to any part of the testator's estate which may be reversionary. If executors in the exercise of their discretion think that a loss will arise by a conversion of reversionary property, and consequently wait until it falls into possession, their doing so will not be allowed to prejudice the tenant for life, and the Court will direct a value to be set upon such reversion at the end of the first year, and will give to the tenant for life the difference between the fund actually received and the value of the reversion as so ascertained (*d*).

Tenant for  
life not  
entitled to  
interim  
income of  
funds  
applied in  
payment of  
legacies.

It will be borne in mind that the tenant for life of a residue is entitled to the income of such residue only, and not to the income which may accrue on such part of the testator's estate as is applied in payment of legacies during the period which may intervene between the death of the testator and the actual payment of such legacies. Thus, in a case where a testator gave £16,000 in legacies, and then gave the residue of his personal estate to his wife for life with remainders over, and all his estate was in Consols at his death, it was held that the income which accrued after the testator's death and before the payment of the legacies on so much of the fund as was applied in payment of such legacies did not belong to the tenant for life, but formed part of the *corpus* of the residue (*e*); and in another case it was held that where a testator bequeaths legacies, and gives his residue to a tenant for life, with remainder over, executors, though as between themselves and the persons interested in the residue they are at liberty to have recourse to any funds they please in order to pay debts and legacies, yet will be treated by the Court in adjusting accounts between the tenant for life and remainderman, as having paid the debts and legacies not out of capital only, but with such portion of the capital as together with the income of that portion for one year was sufficient for the purpose (*f*).

C. 312; *Meyer v. Simonsen*, 5 De G. & Sm. 723; *In re Llewellyn's Trust*, 29 Beav. 171; *Brown v. Gelatly*, *ubi supra*.

(*d*) *Wilkinson v. Duncan*, 23 Beav. 469.

(*e*) *Holgate v. Jennings*, 24 Beav. 623.

(*f*) *Allhusen v. Whittell*, 4 L. R. Eq. 295; *Lambert v. Lambert*, L. R. 16 Eq. 320.

In order to prevent any question arising out of the doctrine above discussed, every will by which a residue is given upon trusts for sale and conversion, should expressly authorise the trustee to postpone such sale and conversion, and should direct that the rents and income arising from the unconverted property shall, from the testator's death, go to the same persons and in the same manner as the income of the proceeds of the conversion thereof would be applicable if such conversion had been made (g).

Direction  
as to appli-  
cation of  
income  
desirable.

If real estate is directed to be sold, and the proceeds of sale are absolutely bequeathed, the property from that time acquires the character of personalty, and in the event of the death of the legatee before a sale, the proceeds would belong to his personal representatives. On the other hand, moneys which are directed to be laid out in the purchase of land, from the creation of the trust assume the character of real estate, and devolve as such on the real representatives of the devisee, whether he dies before the conversion or afterwards.

Destination  
of moneys  
arising from  
land  
directed to  
be sold.

At any time before conversion the legatee or devisee, if *sui juris* and absolutely beneficially interested, may elect to take the property directed to be converted in its actual state; but such election must be unequivocal, and must be shown by acts indicating a clear intention to deal with the property as discharged from the trust for conversion (h).

Election to  
take estate.

When real estate is directed to be converted, and the whole of the proceeds of sale are not absolutely disposed of, or the disposition thereof wholly or partially fails by lapse or otherwise, a question sometimes arises as to the relative rights of the heir-at-law and the personal representatives of the testator. It is clear that the heir is not disinherited by the direction to convert, unless the whole beneficial interest in the proceeds of sale is in the event absolutely disposed of; so far, therefore, as the beneficial interest is either directly or indirectly undisposed of, or becomes so by subsequent events, the undisposed of interest belongs to the heir, and not to

Heir not  
disinherited  
as to in-  
terests not  
disposed of.

(g) See *Wrey v. Smith*, 14 Sim. 202; *Scholefield v. Redfern*, 2 Drew. & Sm. 173.

(h) *Crabtree v. Bramble*, 3 Atk. 680; *Seely v. Jago*, 1 P. W. 389; *Mutlow v. Bigg*, L. R. 1 C. D. 385.

the next of kin (*i*); but if after the failure of the disposition the heir dies, his personal representatives and not his heir are entitled to the undisposed of proceeds (*k*). The principle is clear—the trust for conversion is created for the benefit of the legatees, and not for the next of kin, so that there is no ground for depriving the heir-at-law of the undisposed of interest, simply because, under the trust for the particular purposes of the will, a sale may have taken place. In *Taylor v. Taylor* (*l*), a testator directed his real estate to be sold, and the proceeds to go as his personal estate, and he bequeathed all the residue of his personal estate (including the proceeds of sale) on trusts for his children equally; one of the children died, and it was held that that child's lapsed share in the proceeds should go to the heir-at-law of the testator.

### IX. *In what cases precatory words create a trust.*

Trusts  
raised by  
words of  
recommen-  
dation, &c.

A testator not uncommonly associates an absolute gift or devise with words of "recommendation," "hope," "request," or other terms of a precatory character, which raise the important question whether he intended to impose a trust on the devisee, and often, it is apprehended, the Court of Chancery has been obliged to decide that the devisee must hold the estate saddled with a trust, when there was no such intention on the part of the testator, and when in fact the words have been introduced into the will rather for the purpose of communicating some of the general feelings of the testator, and of affecting the conscience of the devisee, than with a view to fetter the property in his hands.

As a general rule it has been laid down that when property is given absolutely to any person, and the same person is by the will recommended or entreated or wished to dispose of it in favour of another, the recom-

(*i*) *Eyre v. Marsden*, 2 Keen, 574; 1 Jar. on Wills, 526 *et seq.* If, however, real estate is settled by deed upon trust to sell for certain specified purposes, and any of those purposes fail, then, whether the trust for sale is to arise in the lifetime of the settlor, or not until after

his decease, the property to that extent results to the settlor in personalty from the moment the deed is executed: *Clarke v. Franklin*, 4 K. & J. 257.

(*k*) *Wilson v. Coles*, 28 Beav. 215.

(*l*) 3 De G., M. & G. 190.

mendation, entreaty, or wish, will create a trust ; 1st, if the words are so used that upon the whole they ought to be construed as imperative ; 2ndly, if the subject of the recommendation or wish be certain ; and 3rdly, if the objects or persons intended to have the benefit of the recommendation or wish, be also certain (*m*).

The following are instances in which the words of gift have been held to create *a trust* :—

Instances  
of trust.

A devise to the testator's wife of real and personal estate, in the fullest confidence that after her decease she will devise the property to the testator's family (*n*) ; a recommendation to the testator's daughter to dispose of the property among her children (*o*) ; a gift by the testator to his wife, with a recommendation to her to dispose of the property by will amongst certain persons whom the testator named (*p*) ; a devise of copyholds to testator's wife, not doubting that she would dispose of the same to and amongst her children as she should please (*q*) ; a gift to a wife for her life, accompanied with the following words : "It being my will and desire that the principal should be left entirely to the disposal of my wife among such of her relations as she may think proper" (*r*).

But in the following instances it was held that *no trust* was created :—

Instances  
of no trust.

A bequest of dividends to the testator's brother to enable him to assist such of the children of ——— as he should find deserving of encouragement (*s*) ; a devise to the testator's wife that she might support herself and her children according to her discretion, and for that purpose (*t*) ; a gift to a son for his own use and benefit, well knowing he would discharge the trust reposed in him by remembering his, the testator's, other sons and

(*m*) Knight v. Knight, 3 Beav. 148, 173 ; Bernard v. Minshull, 1 John. 276.

(*n*) Wright v. Atkyns, 19 Ves. 299.

(*o*) Malin v. Keighley, 2 Ves. 333.

(*p*) Horwood v. West, 1 Sim. & Stu. 387.

(*q*) Massey v. Sherman, Amb. 520.

(*r*) Birch v. Wade, 3 V. & B. 198 ;

see also Briggs v. Penny, 3 M. & G. 546 ; Wace v. Mallard, 21 L. J. Ch. 355 ; Cholmondeley v. Cholmondeley, 14 Sim. 590 ; Paul v. Compton, 8 Ves. 380 ; Griffiths v. Evan, 5 Beav. 241 ; Alexander v. Alexander, 4 W. Rep. 470 ; Bonser v. Kinnear, 2 Gif. 195 ; Foley v. Parry, 2 M. & K. 138.

(*s*) Benson v. Whittan, 5 Sim. 22.

(*t*) Thorp v. Owen, 2 Hare, 607.

daughters (*u*) ; a gift of income to testator's wife, with request to dispose of the savings among his children (*x*) ; a gift to the testator's wife of the capital of a business, trusting that she would act justly and properly to and by all the testator's children (*y*) ; a gift to two daughters, associated with the following words :—" If they die single of course they will leave what they have amongst their brothers and sisters, or their children " (*z*) ; a gift of real and personal estate to A. B., his heirs, executors, and assigns, for his and their own use and benefit for ever, trusting and wholly confiding in his honour that he will act in strict conformity with the testator's wishes (*a*) ; a gift to a wife, her executors, administrators, and assigns to and for her and their own use and benefit, upon the fullest trust and confidence reposed in her that she would dispose of the same to and for the joint benefit of herself and his children (*b*) ; a gift of a legacy to a " wife to be disposed of by her will in such way as she shall think proper, but I recommend her to dispose of one-half to her own relations, and one-half among such of my relations as she shall think proper " (*c*) ; a gift to wife " being fully satisfied that she will dispose of same by will or otherwise, in a fair and equitable manner to our united relatives, bearing in mind that my relatives are generally in better circumstances than hers are " (*d*) ; a gift to wife " to and for her own use and benefit absolutely, having full confidence in her sufficient and judicious provision for my dear children " (*e*) ; a gift to wife " to be at her disposal in any way she may think best for the benefit of herself and family " (*f*) ; a gift to a married woman " for her own proper use and benefit " separately from her hus-

(*u*) *Bardswell v. Bardswell*, 9 Sim. 319.

(*x*) *Cowman v. Harrison*, 10 Hare, 234.

(*y*) *Pope v. Pope*, 10 Sim. 1.

(*z*) *Lechmere v. Lavie*, 2 M. & K. 197.

(*a*) *Wood v. Cox*, 2 M. & C. 684.

(*b*) *Webb v. Wools*, 21 L. J. Ch. 625.

(*c*) *Johnston v. Rowlands*, 2 De G. & Sm. 356.

(*d*) *Reeves v. Baker*, 18 Beav. 372 ; see also *Winch v. Brutton*, 14 Sim. 379 ; *Knott v. Cottee*, 2 Ph. 192 ; *Knight v. Knight*, 3 Beav. 148 ; see also *Hill on Tr.* 32 ; *Palmer v. Simmonds*, 2 Drew. 221 ; *Green v. Marsden*, 22 L. J. Ch. 1092.

(*e*) *Fox v. Fox*, 27 Beav. 301.

(*f*) *Lambe v. Eames*, L. R. 10 Eq. 267.

band, "the proceeds to be applied by her in the maintenance of all her children" (g).

In some of the cases above referred to, the words were held not to create a trust on the ground that the interest given to the objects was not sufficiently defined (h). It follows that in the preparation of a will for a testator who wishes his devise to dispose of the subject of the devise in a particular manner, but does not intend to create a trust binding on him, the will should contain some words or clause to make this intention manifest. If, on the other hand, the testator's object is to impose a trust, the trust and the nature of the discretion intended to be vested in the devisee should be declared in clear and formal language, and care should be taken that there is no uncertainty as to the subject or interest to be given, or the objects to be benefited.

*X. The effect of a charge of debts and the implied power of sale thereby created.*

All the personal estate of a deceased person (including his leasehold lands) vested in his executors in the first instance, although specifically bequeathed, and may be disposed of by such executors for the payment of the testator's debts, and the purchaser is not bound to see to the application of his purchase money.

Personal estate vests in executors for payment of debts.

By the common law the real estate of a deceased person was not liable to his general debts, but if the testator by his will expressly charged his real estate with the payment of his debts, such a charge was, and of course still is, effective in equity.

Real estate formerly not liable to debts unless charged by will.

A general direction, or an expression of desire in a will that the testator's debts shall be paid, creates a charge on the real estate for their payment (i). But if such a direction or expression of desire is followed by the gift of a particular property for the purpose of paying debts, the *implied* charge will be considered as limited by the subsequent gift, and will be confined to the pro-

In what cases a general direction for payment of debts creates a charge.

(g) *Mackett v. Mackett*, L. R. 14 Eq. 49.

(h) *Hill on Tr.* 44.

(i) 2 Jar. on Wills, 503; *Ball v. Harris*, 4 My. & Cr. 264; *Harding v. Gandy*, 1 Dr. & W. 430.



perty included in such gift (*k*). Where, however, the will contains an *express* charge of debts upon the real estate, such express charge will not be cut down by the subsequent creation of a fund for the payment of the debts (*l*),

A direction that the debts shall be paid by the executors will not amount to a charge (*m*), unless the executor is also devisee, in which case, whether under the devise he takes beneficially or in trust, it is considered that the testator has imposed on him the duty of paying the debts to the extent of the property given to him, and such property is consequently charged with the debts (*n*). But where only one of several executors is devisee, or where the gifts to the executors are unequal, a direction to the executors generally to pay debts does not create a charge (*o*).

A charge of debts confers a power of sale.

A charge of debts confers a power of sale for the purpose of giving effect to it. It was frequently a difficult question in the case of wills coming into operation before the passing of the Act about to be mentioned, who was or were the person or persons in whom the power of sale for payment of debts was vested (*p*). It is now, however, provided by sects. 14 to 18 inclusive of the 22 & 23 Vict. c. 35, as follows:—

Where real estate is charged with debts,

Sect. 14. Where by any will which shall come into operation after the passing of this Act, the testa-

(*k*) *Thomas v. Britnell*, 2 Ves. Sen. 313; *Palmer v. Graves*, 1 Keen, 545. But see *Jones v. Williams*, 1 Col. C. C. 156.

(*l*) *Coxe v. Basset*, 3 Ves. 155; *Wrigley v. Sykes*, 21 Beav. 337.

(*m*) *Keeling v. Brown* 5 Ves. 359; *Cook v. Dawson*, 30 L. J. Chan. N. S. 359.

(*n*) *Henvell v. Whitaker*, 3 Russ. 343; *Clowdsley v. Pelham*, 1 Vern. 411; *Dormay v. Borradaile*, 10 Beav. 263; *Hartland v. Murrell*, 27 Beav. 204; *Harris v. Watkins*, Kay, 438.

(*o*) *Warren v. Davies*, 2 My. & K. 49; *Symons v. James*, 2 Y. & C. C. 301.

(*p*) *Elliott v. Merryman*, Barn. 78; *Walker v. Smallwood*, Amb. 676; *Eland v. Eland*, 4 M. & C.

420; *Shaw v. Borrer*, 1 Keen, 559; *Ball v. Harris*, 4 M. & C. 264; *Colyer v. Finch*, 5 H. of L. Ca. 905; *Storry v. Walsh*, 18 Beav. 559; *Hodkinson v. Quinn*, 1 J. & H. 303; *Robinson v. Lowater*, 5 D. G. M. & G. 272; *Wrigley v. Sykes*, 21 Beav. 337; *Gosling v. Carter*, 1 Coll. 644; *Doe d. Jones v. Hughes*, 6 Exch. 223. These cases are discussed at some length in a former edition of this work, but as they only apply to wills coming into operation before the 13th August, 1859, it is not thought necessary to do more than refer to them in this edition. See also for a comprehensive and valuable examination of the cases on the subject, Watters on the Trustee Acts, pp. 124 to 247.

tor shall have charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid, by a sale and absolute disposition, by public auction or private contract, of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

15. The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will or by the Court of Chancery, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid. Powers given by last section extended to survivors, devisees, &c.
16. If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall Executors to have power of raising money, &c., where there is no sufficient devise.

for the time being be vested: but any sale or mortgage under this Act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

Purchasers,  
&c., not  
bound to  
inquire as  
to powers.

17. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections 14, 15, and 16 of this Act or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Sections 14,  
15, and 16  
not to affect  
certain  
sales, &c.,  
nor to  
extend to  
devises in  
fee or in  
tail.

18. The provisions contained in sections 14, 15, and 16 shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the passing of this Act, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not been passed, and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage, as he or they may by law now do.

Operation  
of section  
where  
testator  
has made a  
partial pro-  
vision for  
debts.

According to the terms of sect. 14, the power is to be vested in the trustees only where the testator has not made any express provision for raising the debts, &c., out of the estate charged. It is conceived that the simple purpose of these words is to prevent any particular provision which the testator may have made for the application of his property, or of particular parts of it, in payment of his debts, from being frustrated. If, however, he has made express provision for the payment of his debts out of particular parts of his estate, and such parts prove to be insufficient for the purpose, it is presumed that the trustees might sell the remainder of the estate vested in them under the powers conferred by this section in order to meet the deficiency (a).

(a) See *Wrigley v. Sykes*, 21 Beav. 337.

It will be seen that under the 18th section the case of a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, is withdrawn from the Act.

Operation of 18th section.

Under such a devise, it is well established that the devisee, if he is also the executor or one of the executors, can sell or mortgage, and that the purchaser or mortgagee is not bound to see to the application of his money, but whether a devisee not being an executor can make a good title alone, remains undecided (b).

Devisee in fee subject to debts can sell, &c., if he is also an executor.

The existence of the power of sale conferred by the Act is not likely to create any practical difficulty in cases coming within the 14th section. The payment of debts is thereby in effect made one of the trusts on which the trustees hold the property, and so long as they retain the legal estate and also remain in possession or receipt of the rents and profits of the property, however long a time may have elapsed since the testator's death, a purchaser can safely take a title from them without inquiry (c); and so soon as the trusts have been performed, it will be their duty to convey to the beneficiary; and such conveyance will be conclusive evidence in favour of purchasers from the beneficiary that the debts have been paid. If, however, before any such conveyance is made of the legal estate, the beneficiaries are let into possession of the trust property, and a considerable time has elapsed since the testator's death, it is apprehended that a purchaser from the trustees having notice of such possession cannot safely complete without some inquiry, in order to ascertain that there is no breach of trust (d).

How long power remains in force under the 14th section.

But there is more difficulty in cases coming within the 16th section. Suppose, for instance, that the real estate is devised to the use of A. for life, with remainder to his first and other sons in tail. During A.'s life, the executors would clearly have a power of sale for payment of debts, but on A.'s death his eldest son

How long under the 16th section.

(b) *Johnson v. Kennett*, 3 M. & K. 624; *Colyer v. Finch*, 5 H. L. C. 905; *Corser v. Cartwright*, L. R., 7 H. L. 731.

(c) *Sabin v. Heape*, 29 L. J. Ch. 79; *Forbes v. Peacock*, 1 Phil. 717.

(d) *Stroughill v. Anstey*, 1 De Gex, Mac. & Gor. 654.

bars the entail and becomes owner in fee simple, and the question is, whether the executor's power still subsists, or whether the case does not come within the exception at the end of the 18th section—in other words, whether that exception applies only to devises creating a fee simple or fee tail in possession at the testator's death, or extends also to estates originally limited in remainder, so soon as they become estates in possession. The latter construction would be the most convenient, because if the executor still retains the power, it is difficult to see how the owner of the land can ever procure an effectual discharge from it, so as to become capable of conferring a marketable title on a purchaser.

Express provision for raising debts, &c., should be inserted.

On the whole, the above enactments cannot be considered as placing the law in relation to a charge of debts on a perfectly satisfactory footing, and the practitioner is recommended not to rely on them, but as a general rule to insert in a will an express provision for raising money to pay debts and legacies by proper trusts or powers vested in trustees for that purpose.

Real estate assets to be administered in equity.

If the will contains no express or implied charge for the payment of debts, the freehold and copyhold estates of persons dying after the 29th of August, 1833, as well as their personal estate, are, by the statute 3 & 4 Will. 4, c. 104, made assets to be administered in courts of equity for the payment thereof (whether due on simple contract or on specialty), but under this statute creditors by specialty, in which the heirs are bound, were given a preference over creditors by simple contract or by specialty, in which the heirs are not bound. But this preference is now abolished as regards persons dying on or after 1st January, 1870, by the statute 32 & 33 Vict. c. 46, which provides that all the creditors of a person dying on or after that day, as well by specialty as by simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of the deceased person, whether such assets are legal or equitable.

Alienation by heir, &c., for value, good against creditors.

If any part of the real or personal estate of a testator has been *bonâ fide* alienated for valuable consideration by the heir, devisee, or legatee, and as to personal estate, with the assent of the executor, and whether such

alienation is by way of sale, or by an ante-nuptial settlement, such alienation will prevail against any creditor of the testator (*e*), provided that no administration suit has been previously instituted. But a voluntary alienation, or a judgment entered up against the heir, devisee, or legatee, will not prevail (*f*).

The 3 & 4 Will. 4, c. 104, extends not only to debts due at the testator's death, but also to all liabilities which may result out of obligations entered into by him during his life (*g*). Act extends to future liabilities.

A devise for the payment of debts raises no trust for the payment of those debts which have been barred by the Statute of Limitations prior to the death of the testator (*h*); but if the time allowed by the statute has not run out at the testator's death, then so far as his debts are charged on the real estate, such a devise or charge will, until the 1st January, 1879, but not after that date (*i*), prevent the statute from running in equity after the death of the testator (*k*). But a trust for the payment of debts in a will of *personal* estate will not prevent the operation of the statute (*l*). Operation of devise for the payment of debts, as regards Statute of Limitations.

## XI. *Descent, and the mode in which the personal estate of an intestate is distributed.*

As to cases in which the real estate descends to the heir-at-law for want of a testamentary disposition, all descents which have taken place since the first day of January, 1834, are governed by the rules of inheritance laid down in the 3 & 4 Will. 4, c. 106, and all descents which took place before that time will be governed by the canons of descent as stated in 2 Bla. Com., Chap. Descent. Descent.

Where there is an intestacy as to the personal estate the next of kin will be ascertained by reference to the statutes for the distribution of the estates of intestates. Statute of Distributions.

(*e*) *Spackman v. Timbrell*, 8 Sim. 253; *Richardson v. Horton*, 7 Beav. 123; *Jones v. Noyes*, 4 Jur. N. S. 1033; *Dilkes v. Broadmead*, 2 Giff. 113; 2 De G., F. & J. 566.

(*f*) *Kinderley v. Jervis*, 22 Beav. 1.

(*g*) *Hamer's Devisees' case*, 2 De G., M. & G. 366.

(*h*) *Burke v. Jones*, 2 Ves. & Bea. 275.

(*i*) 37 & 38 Vict. c. 57, s. 10.

(*k*) *Hughes v. Wynne*, Tur. & Russ. 307.

(*l*) *Evans v. Tweedy*, 1 Beav. 55; *Freaker v. Cranefeldt*, 3 M. & Cr. 499.

Personal  
estate dis-  
tributed  
according to  
domicil.

The personal estate of an intestate is distributed according to the law of the country where he is domiciled at the time of his death, without regard to the place where the property may be situated.

Who are  
next of kin  
under the  
statute.

Assuming that the intestate is domiciled in this country at his death, his personal estate is distributable under the statute of 22 & 23 Car. 2, c. 10, as follows, *i.e.*, one-third part to his wife, and the remaining two-thirds to his children, and such persons as legally represent such children, in case any of the said children shall be then dead. If there are no children, nor any legal representatives of them, then one moiety of the estate is allotted to the wife, and the residue is distributable equally between every of the next of kindred of the intestate and those who legally represent them (*m*).

Representa-  
tion among  
collaterals.

It is provided by the 7th section of the above statute, that there shall be no representation admitted among collaterals after brothers' and sisters' children.

Where there  
is no wife.

If there is no wife, all the estate is distributable amongst the children equally, and if there is no child, then amongst the next of kindred, in equal degree, of the intestate and their legal representatives as aforesaid.

Legal repre-  
sentatives  
of children.

The legal representatives of children to the remotest degree are admitted, but they must be descendants strictly speaking, so that if a son of the intestate should die, leaving a widow and child, the child would take the whole of the father's share (*n*).

Where in-  
testate  
leaves  
widow,  
children,  
and repre-  
sentatives  
of children.

If the intestate dies, leaving a widow and children and the lineal representatives of children who may have died, the widow would take one-third of the estate, and the remaining two-thirds would be divisible between the children and the representatives of the deceased children, the children of the deceased children taking *per stirpes*, *i.e.*, the children of each deceased child would take by representation the share which their parent would have taken if he had survived. And it has been lately decided that the division is *per stirpes* where the intestate leaves no children, but only grand-children and great grandchildren, and that in such case

the estate is to be divided into as many shares as there have been children who have left living descendants, and that the descendants of each such child are to take as representing the child, *per stirpes* (o).

The 5th section of the statute provides, with regard to the share of children, that no child of the intestate except his heir-at-law who shall have any estate in land by the settlement of the intestate, or who shall be advanced by the intestate in his lifetime by portion equal to the distributive shares of the other children, shall participate with them in the surplus; but if the estate so given to such child by way of advancement be not equivalent to their shares, then that such part of the surplus as will make it so shall be allotted to him or her. Advancement.

An advancement by portion within the 5th section is a sum given by a parent to establish a child in life or to make a provision for such child; as *e.g.*, on marriage, or by buying a commission or outfit for a son going into the army, or by buying the goodwill of a business, or by paying a son's admission fee to an Inn of Court, or the premium and stamp on his being articulated to a solicitor, but mere annual payments will not be treated as advancements, *e.g.*, the payment of a fee to a special pleader in the case of a son going to the bar, or the price of outfit and passage-money of an officer in the army going out to India with his regiment (p). Whether the payment of a child's debts or an advancement would depend on the circumstances. In one case large sums paid by a father to a son to enable him to discharge debts of honour, the non-payment of which would have obliged him to leave the army, were held advancements (q), but in another case sums sent out to India to relieve the son from temporary embarrassments were held not to be advancements (r). What is an advancement.

If a child dies intestate without any wife or child or lineal representatives of a child, leaving a father, the father is entitled to the whole of the estate. If he dies intestate without a child, but leaving a widow and a Where a child dies without wife or child but leaving a father, &c.

(o) *Re Ross' Trusts*, L. R. 13 Eq. 286, contrary to the dictum in 2 Wms. Exors. 6th ed. 1385.

(p) *Boyd v. Boyd*, L. R. 4 Eq. 305;

*Taylor v. Taylor*, *ib.* 20 Eq. 155.

(q) *Boyd v. Boyd*, *ubi supra*.

(r) *Taylor v. Taylor*, *ubi supra*.



Where the intestate dies without father, wife, or children, but leaving a mother.

father, the personal estate will be equally divisible between the wife and the father. If after the death of the father any of his children shall die intestate without wife or children in the lifetime of the mother, every brother and sister, and the representatives of them, are entitled to an equal share with her (s).

Who are in the second and third degree.

A grandfather or grandmother, being in the second degree, is entitled to the whole personal estate, in preference to uncles and aunts who are in the third degree; consequently great grandfathers or great grandmothers are equally entitled with uncles and aunts, and uncles and aunts and nephews and nieces are all in the same degree, so that if the intestate should leave no nearer kindred, they would be entitled in equal shares *per capita* (t).

If the intestate has left a brother and two nephews, the children of a deceased brother, one moiety goes to the brother and the other to the nephews, but if he has left no brother or sister, but only nephews and nieces, the children of deceased brothers or sisters, the nephews and nieces take *per capita* (u).

No preference between whole and half-blood.

In ascertaining who are the next of kin according to the Statute of Distributions, there is no preference between the whole and the half-blood, so that brothers and sisters of the half-blood are entitled equally with brothers and sisters of the whole blood (v).

Husband entitled to administer to wife.

If the wife dies before the husband, he is entitled to administer to her personalty so far as it was not reduced into possession by him during her lifetime (x).

Customs of City of London, York, &c., repealed.

The special customs concerning the distribution of personal estates of intestates which formerly prevailed in the City of London, and in the Province of York, &c., are repealed as to all persons dying after the 31st Dec., 1856, by the 19 & 20 Vict. c. 94.

(s) 1 Jac. 2, c. 17.

(t) 3 Wms. Exors. 1194.

(u) Walsh v. Walsh, Prec. Chan. 54; Bowers v. Littlewood, 1 P. Wms.

595.

(v) Watts v. Crooke, Shaw, P. C.

108.

(x) 29 Car. 2, c. 3, s. 25.

XII. *The probate of wills and the stamp duties on probates and letters of administration, and under the Legacy and Succession Duty Acts.*

All wills of personalty must be proved in the Probate division of the High Court of Justice, except in certain cases where the probate may be in the County Court (y). Wills of personalty must be proved.

Previously to the Act 20 & 21 Vict. c. 77, a will which related to land only ought not to have been proved, and the probate was not evidence of the due execution of such will as to the land; but by section 64 of the above Act it is provided that in any action at law or suit in equity where according to the existing law it would be necessary to produce and prove an original will in order to establish a devise of real estate, the party intending to establish on proof such devise may give notice to the other party of his intention to produce the probate or a stamped copy in evidence, and in such case the probate or stamped copy shall be sufficient evidence, although the will may not have been proved in solemn form, unless the party receiving such notice shall within four days give notice that he disputes the validity of the devise. And by other sections of the Act, the probate or a stamped copy is made conclusive evidence of the due execution and contents of the will as to real estate, when the will has been proved in solemn form or has been established in a contentious cause or matter, and the heir-at-law has been cited (z). As to probate of will relating to real estate.

If an executor dies, having himself by will appointed an executor, the latter becomes the executor of the original testator but if the first executor dies intestate, his administrator does not represent the original testator, but letters of administration *de bonis non* with the will annexed of the original testator must be taken out. In like manner, if A. dies intestate, and B. takes out letters of administration to his estate and afterwards dies, the executor or administrator of B. does not represent A., but new letters of administration *de bonis non* of A. must be taken out. Transmission of representation.

If two or more persons are appointed executors and all prove the will, the representation passes to the executor of the last survivor.

(y) 21 & 22 Vict. c. 95, s. 10; see also 36 & 37 Vict. c. 52.

(z) 20 & 21 Vict. c. 77, sects. 61, 62, 63.

Effect of renunciation by executor.

Previously to the recent Act, if one of two joint executors renounced probate, the renunciation might be retracted at any time, and the renouncing executor come in and prove. Consequently, if one of two joint executors renounced, and the proving executor died first, the representation did not pass to his executor; and if the renouncing executor still refused to prove, letters of administration *de bonis non* to the original testator became necessary. But it is now provided that where an executor renounces probate of a will, or dies without having taken probate, or does not appear on a citation to take probate, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor (a).

Probate of will in exercise of power.

Probate is necessary of a will made in execution of a power and affecting personalty; but a will merely appointing a guardian need not be proved (b).

Stamp duties on probates.

By 55 Geo. 3, c. 184, the following stamp duties are imposed on probates of wills and letters of administration with the will annexed, to be granted in England or Ireland:—

Where the estate and effects for or in respect of which such probate or letters of administration respectively shall be granted (c), *exclusive of what the deceased shall have been possessed of or entitled to as a trustee, for any other person or persons, and not beneficially*, shall be

			£	s.	d.
above the } value of }	£20 and under the value of	£100	.	0	10 0
of the value of	£100	" "	200	.	2 0 0
"	200	" "	300	.	5 0 0
"	300	" "	450	.	8 0 0
"	450	" "	600	.	11 0 0

(a) 20 & 21 Vict. c. 77, s. 79; 21 & 22 Vict. c. 95, s. 16.  
(b) *In re* Morton, 33 L. J. Prob. 87.  
(c) By the 28 Vict. c. 15, s. 4, the

personalty which any person dying on or after the 3rd of April, 1860, shall have disposed of by will under a general power, is made liable to probate duty as if it were his own.

Of the value of		£	s.	d.
„	£600 and under the value of 800	. 15	0	0
„	800 „ „ 1,000	. 22	0	0
„	1,000 „ „ 1,500	. 30	0	0
„	1,500 „ „ 2,000	. 40	0	0
„	2,000 „ „ 3,000	. 50	0	0
„	3,000 „ „ 4,000	. 60	0	0
„	4,000 „ „ 5,000	. 80	0	0
„	5,000 „ „ 6,000	. 100	0	0
„	6,000 „ „ 7,000	. 120	0	0
„	7,000 „ „ 8,000	. 140	0	0
„	8,000 „ „ 9,000	. 160	0	0
„	9,000 „ „ 10,000	. 180	0	0
„	10,000 „ „ 12,000	. 200	0	0
„	12,000 „ „ 14,000	. 220	0	0
„	14,000 „ „ 16,000	. 250	0	0
„	16,000 „ „ 18,000	. 280	0	0
„	18,000 „ „ 20,000	. 310	0	0
„	20,000 „ „ 25,000	. 350	0	0
„	25,000 „ „ 30,000	. 400	0	0
„	30,000 „ „ 35,000	. 450	0	0
„	35,000 „ „ 40,000	. 525	0	0
„	40,000 „ „ 45,000	. 600	0	0
„	45,000 „ „ 50,000	. 675	0	0
„	50,000 „ „ 60,000	. 750	0	0
„	60,000 „ „ 70,000	. 900	0	0
„	70,000 „ „ 80,000	. 1,050	0	0
„	80,000 „ „ 90,000	. 1,200	0	0
„	90,000 „ „ 100,000	. 1,350	0	0
„	100,000 „ „ 120,000	. 1,500	0	0
„	120,000 „ „ 140,000	. 1,800	0	0
„	140,000 „ „ 160,000	. 2,100	0	0
„	160,000 „ „ 180,000	. 2,400	0	0
„	180,000 „ „ 200,000	. 2,700	0	0
„	200,000 „ „ 250,000	. 3,000	0	0
„	250,000 „ „ 300,000	. 3,750	0	0
„	300,000 „ „ 350,000	. 4,500	0	0
„	350,000 „ „ 400,000	. 5,250	0	0
„	400,000 „ „ 500,000	. 6,000	0	0
„	500,000 „ „ 600,000	. 7,500	0	0
„	600,000 „ „ 700,000	. 9,000	0	0

Of the value of	£	s.	d.
„ 700,000 and under the value of 800,000	10,500	0	0
„ 800,000 „ „ 900,000	12,000	0	0
„ 900,000 „ „ 1,000,000	13,500	0	0
And where the value shall amount to £1,000,000 or upwards, then for every one hundred thousand pounds of the whole value of the estate and effects, and any fractional part of one hundred thousand pounds ( <i>f</i> ).	1,500	0	0

Stamp  
duties on  
letters of  
administra-  
tion.

By 55 Geo. 3, c. 184, the following stamp duties are imposed on letters of administration without a will annexed, to be granted in England or Ireland.

Where the estate and effects for or in respect of which such letters of administration shall be granted, *exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially*, shall be

		£	s.	d.
above the } value of }	£20 and under the value of £50	0	10	0
of the value of 50	„ „ 100	1	0	0
„ 100	„ „ 200	3	0	0
„ 200	„ „ 300	8	0	0
„ 300	„ „ 450	11	0	0
„ 450	„ „ 600	15	0	0
„ 600	„ „ 800	22	0	0
„ 800	„ „ 1,000	30	0	0
„ 1,000	„ „ 1,500	45	0	0
„ 1,500	„ „ 2,000	60	0	0
„ 2,000	„ „ 3,000	75	0	0
„ 3,000	„ „ 4,000	90	0	0
„ 4,000	„ „ 5,000	120	0	0
„ 5,000	„ „ 6,000	150	0	0
„ 6,000	„ „ 7,000	180	0	0
„ 7,000	„ „ 8,000	210	0	0
„ 8,000	„ „ 9,000	240	0	0
„ 9,000	„ „ 10,000	270	0	0
„ 10,000	„ „ 12,000	300	0	0

(*f*) See 22 & 23 Vict. c. 36.

Of the value of	and under the value of	£	s.	d.
„ £12,000	„ „ £14,000	. 330	0	0
„ 14,000	„ „ 16,000	. 375	0	0
„ 16,000	„ „ 18,000	. 420	0	0
„ 18,000	„ „ 20,000	. 465	0	0
„ 20,000	„ „ 25,000	. 525	0	0
„ 25,000	„ „ 30,000	. 600	0	0
„ 30,000	„ „ 35,000	. 675	0	0
„ 35,000	„ „ 40,000	. 785	0	0
„ 40,000	„ „ 45,000	. 900	0	0
„ 45,000	„ „ 50,000	1,010	0	0
„ 50,000	„ „ 60,000	1,125	0	0
„ 60,000	„ „ 70,000	1,350	0	0
„ 70,000	„ „ 80,000	1,575	0	0
„ 80,000	„ „ 90,000	1,800	0	0
„ 90,000	„ „ 100,000	2,025	0	0
„ 100,000	„ „ 120,000	2,250	0	0
„ 120,000	„ „ 140,000	2,700	0	0
„ 140,000	„ „ 160,000	3,150	0	0
„ 160,000	„ „ 180,000	3,600	0	0
„ 180,000	„ „ 200,000	4,050	0	0
„ 200,000	„ „ 250,000	4,500	0	0
„ 250,000	„ „ 300,000	5,625	0	0
„ 300,000	„ „ 350,000	6,750	0	0
„ 350,000	„ „ 400,000	7,875	0	0
„ 400,000	„ „ 500,000	9,000	0	0
„ 500,000	„ „ 600,000	11,250	0	0
„ 600,000	„ „ 700,000	13,500	0	0
„ 700,000	„ „ 800,000	15,750	0	0
„ 800,000	„ „ 900,000	18,000	0	0
„ 900,000	„ „ 1,000,000	20,250	0	0

And where the value shall amount to £1,000,000 or upwards, then for every one hundred thousand pounds of the whole value of the estate and effects, and any fractional part of one hundred thousand pounds (e) . . . 2,250 0 0

The probate or administration duty is payable in respect only of such personal estate as at the time of the death of the deceased is within the jurisdiction of the court. Consequently

Probate or  
administra-  
tion duty  
payable only  
on personal

estate  
within  
jurisdiction  
of court.

property which at the death is in a foreign country is exempt from duty, although it may be subsequently brought into this country by the executor. Thus it has been held that French Government *rentes* and United States stock are exempt from duty (*f*), while on the other hand the duty has been held to attach to the securities of a foreign government which were in this country at the death of the deceased, and were marketable securities here transferable by delivery only (*g*).

Duty when  
payable on  
proceeds of  
sale of  
land.

Whatever the executor receives *virtute officii* is liable to probate duty. Thus if a person enters into a binding contract to sell land, and such contract is completed after his death, duty is payable on the purchase-money (*h*). But duty is not payable in respect of the proceeds of land directed to be sold either by the will of the deceased or by a deed made in his lifetime, and which remains capable of being revoked by him up to the time of his death. Thus, where a freehold estate was conveyed by H. to trustees upon trust by sale or mortgage to pay certain debts, and to pay the residue of the proceeds to H., his executors, administrators, and assigns, the land was sold after H.'s death, and it was held that no probate duty was payable in respect of the proceeds (*i*). But if A. conveys land to trustees in trust to sell and pay the proceeds to B., and B. dies before the sale, it is conceived that probate duty would clearly be payable by B.'s executor in respect of such proceeds. And where land is devised in trust for sale, and there is a failure of the trusts so that the testator's heir takes the proceeds, such heir takes it as money, and on his death probate duty is payable on it, although the land still remains unsold (*k*).

In a case where two partners bought freehold property out of the partnership funds, and the property was conveyed to uses, under which each partner took an undivided moiety in fee simple, it was held, on the death of one partner, that probate duty was not payable in respect of his share (*l*). In another case, the testator was one of two partners carrying on business in India. On his death part of the partnership property con-

(*f*) Attorney-General *v.* Dimond, 1 Crompton & Jerv. 356; Attorney-General *v.* Hope, 1 Crom. M. & R. 530.

(*g*) Attorney-General *v.* Bouwens, 4 M. & W. 171; 7 L. J. N. S. Ex. 297; see also Att.-Gen. *v.* Pratt, L. R. 9 Ex. 140.

(*h*) Attorney-General *v.* Brunning, 6 Jur., N. S. 1083; 30 L. J. Ex. 379.

(*i*) Matson *v.* Swift, 8 Beav. 368.

(*k*) Att.-Gen. *v.* Lomas, L. R. 9 Ex. 29.

(*l*) Custance *v.* Bradshaw, 4 Hare, 315.

sisted of real estate which had been conveyed to the partners as joint tenants, and which was subsequently sold. It was held that legacy duty was payable in respect of the testator's share; and it seems from the judgment of the V.-C. that he would have held it to be liable to probate duty also if the question had arisen (*m*). The distinction between the two last mentioned cases seems to be this, that in the former the form in which the conveyance was made to the partners, giving each an undivided moiety in fee simple, showed an intention that there should not be a conversion, except if necessary for partnership purposes; whereas, in the latter case, the property was a mere partnership asset, and the testator had no interest in it, except as such.

The cases of *Matson v. Swift* and *Custance v. Bradshaw* have been approved of in a subsequent case (*n*).

Desperate and doubtful debts owing to the deceased are not liable to probate duty (*o*). Desperate debts.

Probate duty is payable in respect of personalty disposed of by a testator under a *general* power (*p*). Personalty disposed of under power.

Probate duty is payable in respect of the personalty in this country of a testator domiciled abroad (*q*). Where testator is domiciled abroad.

In making the necessary affidavit as to the value of the estate of the deceased, the executor or administrator must make no deduction for debts (*r*), except that where after the 1st September, 1868, leasehold estates are the sole security by way of mortgage for any debt owing from the deceased, the amount of such mortgage debt may be deducted (*s*). In all other cases an executor or administrator may obtain a return of probate or administration duty on showing that he has paid debts to such an amount as to reduce the value of the estate below the sum on which duty has been paid, but an application for this purpose must be made within three years after probate, &c., except in special cases, when the time will be extended (*t*).

By the stat. 55 Geo. 3, c. 184, the following duties are imposed on legacies, and successions to personal estate upon intestacies, where the testator, testatrix, or intestate shall have died after the 5th of April, 1805 :— Duties on legacies.

(*m*) *Forbes v. Steven*, L. R. 10 Eq. 178.

(*n*) *In re De Lancey's Succession*, L. R. 5 Ex. 102.

(*o*) *Moses v. Crafter*, 4 C. & P. 524.

(*p*) 23 Vict. c. 15, s. 4.

(*q*) *Trevor's Taxes on Succession*, pp. 35—37.

(*r*) 55 Geo. 3, c. 184, s. 38.

(*s*) 31 & 32 Vict. c. 124, s. 7.

(*t*) 55 Geo. 3, c. 184, s. 51.



For every legacy, specific, or pecuniary, or of any other description, of the amount or value of £20 or upwards, given by any will or testamentary instrument of any person who shall have died after the 5th day of April, 1805, either out of his or her *personal or moveable* estate, or out of or charged upon his or her real or heritable estate, or out of any monies to arise by the sale, mortgage, or other disposition of his or her real or heritable estate, or any part thereof, and which shall be paid, delivered, retained, satisfied, or discharged after the 31st day of August, 1815.

Also, for the clear residue (when devolving to one person), and for every share of the clear residue (when devolving to two or more persons) of the *personal or moveable* estate of any person who shall have died after the 5th day of April, 1805 (after deducting debts, funeral expenses, legacies, and other charges first payable thereout), whether the title to such residue, or any share thereof, shall accrue by virtue of any testamentary disposition, or upon a partial or total intestacy where such residue or share of residue, shall be of the amount or value of £20 or upwards, and where the same shall be paid, delivered, retained, satisfied or discharged after the 31st day of August, 1815,

And also for the clear residue (when given to one person), and for every share of the clear residue (when given to two or more persons) of the monies *to arise from the sale*, mortgage, or other disposition of any real or heritable estate directed to be sold, mortgaged, or otherwise disposed of by any will or testamentary instrument of any person who shall have died after the 5th day of April, 1805 (after deducting debts, funeral expenses, legacies, and other charges first made payable thereout if any), where such residue, or share of residue, shall amount to £20 or upwards, and where the same shall be paid, retained, or discharged after the 31st day of August, 1815.

Where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of *a child of the deceased, or any descendant of a child of the deceased, or to or for the benefit of the father or mother or any lineal ancestor of the deceased*, a duty at and after the rate of £1 *per centum* on the amount or value thereof . . . . .

£ s. d.

*per cent.*  
1 0 0

Where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of *a brother or sister of the deceased, or any descendant of a brother or sister of the deceased*, a duty at and after the rate of £3 *per centum* on the amount or value thereof . . . . .

*per cent.*  
3 0 0

Where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of *a brother or sister of the father or mother of the deceased, or any descendant of a brother or sister of the father or mother of the deceased*, a duty at and after the rate of 5 *per centum* on the amount or value thereof . . . . .

*per cent.*  
5 0 0

Where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of *a brother or sister of a grandfather or grandmother of the deceased, or any descendant of a brother or sister of a grandfather or grandmother of the deceased*, a duty at and after the rate of £6 *per centum* on the amount or value thereof . . . . .

*per cent.*  
6 0 0

And where any such legacy or residue, or any share of such residue, shall have been given or have devolved to or for the benefit of any person *in any other degree of collateral consanguinity to the deceased* than is above described, or to or for the benefit of *any stranger in blood to the deceased*, a duty at and after the rate of £10 *per centum* on the amount or value thereof . . . . .

*per cent.*  
10 0 0

And all gifts of annuities or by way of annuity, or of any other partial benefit or interest out of

any such estate or effects as aforesaid, shall be deemed legacies within the intent and meaning of this schedule.

And where any legatee shall take two or more distinct legacies or benefits under any will or testamentary instrument which shall together be of the amount or value of £20, each shall be charged with duty though each or either may be separately under that amount or value.

### *Exemptions.*

Legacies and residues, or shares of residue of any such estate or effects as aforesaid, given or devolving to or for the benefit of the husband or wife of the deceased, or to or for the benefit of any of the Royal Family (*u*).

And all legacies which were exempted from duty by the Act passed in the 39th year of his Majesty's reign, c. 73, for exempting certain specific legacies given to bodies corporate or other public bodies, from the payment of duty (*u*).

Legacies and residue, or shares of residue of or out of the estate and effects of any deceased depositor in any savings bank where the whole of such estate and effects shall not exceed the value of £50 (*v*).

Legacies given for the education or maintenance of poor children in Ireland, or to be applied in support of any public charitable institution in Ireland, or for any purpose (in Ireland) merely charitable (*w*).

The following is an abstract of the most important provisions of the Legacy Duty Acts now in force.

Duty to be  
paid by  
executor  
before pay-  
ing legacy

THE duty is to be paid by the executor (*x*) upon the payment of the legacy, and in default of payment, the duty is a debt from the executor and also from the legatee (*y*).

(*u*) 55 Geo. 3, c. 184.

(*v*) 9 Geo. 4, c. 92, s. 40.

(*w*) 5 & 6 Vict. c. 82, s. 38.

(*x*) It will be borne in mind that the term "executor" in the above

abstract includes an administrator, and that the term "legacy" includes a residue or share of a residue.

(*y*) 36 Geo. 3, c. 52, s. 6.

Every gift by will or testamentary instrument, which by virtue thereof is to have effect out of the personal estate of the deceased or out of any personal estate which he had power to dispose of, or is charged upon his real estate or any real estate which he had power to charge with the payment of money, or is payable out of any money to arise by sale, mortgage, or other disposition of such real estate, and whether such gift be by way of annuity, or in any other form, is to be deemed a legacy for the purpose of the Acts; and every donation *mortis causâ* is also to be deemed a legacy. But no money which by any marriage settlement is subject to any limited power of appointment for the benefit of persons therein specially named and described as the objects of such power, or any issue of such persons, shall be liable to duty under the will by which the power is exercised (z).

What is a legacy within the meaning of the Acts.

The value of an annuity is to be calculated according to the tables in the schedule to the Succession Duty Act 1853 (a), and the duty thereon is made payable in four equal annual instalments, and the value is to be calculated without regard to any contingency on which it may be determinable. But if the annuity determines by death before the end of the four years, the duty is payable in proportion only to so many of the payments of the annuity as actually became due and payable, and in case the annuity determines by any other contingency than death, not only all future instalments of duty cease to be payable, but a return is to be made of so much of the duty actually paid as will reduce the same to the amount which would have been payable for such annuity calculated according to the term for which it shall have endured (b).

The value of annuities to be calculated according to tables, and to be payable by four instalments.

The value of an annuity charged on a legacy is to be ascertained in the same manner, and the duty on the legacy is to be paid on its value, after deducting the value of the annuity. The duty on the annuity is to be paid by the legatee, and he is to retain the same out of the annuity (c).

The value of annuities payable out of legacies, how to be calculated and paid.

The duty upon any legacy given by direction to purchase an annuity of a certain amount is to be calculated upon the sum necessary to purchase the annuity according to the before mentioned tables, and the annuity to be purchased is to be reduced proportionably (d).

Duty on legacies given to purchase annuities.

(z) 8 & 9 Vict. c. 76, s. 4; see also 45 Geo. 3, c. 28, ss. 4, 5.

(a) See 16 & 17 Vict. c. 51, s. 31.

(b) 36 Geo. 3, c. 52, s. 8.

(c) Sect. 9.

(d) Sect. 10.

Duty on legacies whose value can only be ascertained by application of the allotted fund.

How duties on legacies enjoyed by persons in succession shall be charged,

The duty on legacies whose value can only be ascertained by actual application of the allotted fund is to be charged on the money or effects as applied (*e*).

The duty on legacies enjoyed by persons in succession is to be charged as follows: If all the persons interested are chargeable at the same rate, the duty is to be charged on the legacy and paid as if it were a legacy to one and the same person; but if the persons interested are chargeable at different rates, then the persons having life or other temporary interests are to be charged on such interests as if the annual produce had been given to them by way of annuity, and the person who becomes absolutely entitled is to be charged with duty on the *corpus* when it falls into possession (*f*).

and by whom payable.

Where the duty payable on a legacy given to different persons in succession is chargeable at one and the same rate, the executor is to pay it before he transfers or pays the legacy to the trustees of it, but where such duty is chargeable at different rates, then the duty is to be paid by the executor unless the legacy has been paid to or vested in any trustee, in which case the trustee is to be liable for the duty as if he were the executor (*g*).

Plate, &c.

Plate, furniture, or other things, not yielding income, are not liable to duty while enjoyed by persons who have no right to dispose thereof (*h*).

Duties apply to intestacies.

The duty on legacies enjoyed in succession is to be charged as such, whether the person entitled take under the will or by intestacy (*i*).

Legacies to joint tenants.

The duty on legacies given on joint tenancy is to be paid by the joint tenants in proportion to their interests (*j*).

Legacies given on contingencies.

Where a legacy is contingent the duty is payable as if it were an absolute legacy to the first legatee, although the person entitled to the benefit of the contingency may not be liable to the same duty or to any duty: and if the contingency happens and the person thus becoming entitled is chargeable with a higher rate of duty, he must pay the difference (*k*).

Legacies subjected to power of appointment how

Where a legacy is subject to a power of appointment in favour of special objects, the property is charged with duty as property given to different persons in succession, and the ap-

(*e*) 36 Geo. 3, c. 52, s. 11.

(*f*) Sect. 12.

(*g*) Sect. 13.

(*h*) Sect. 14.

(*i*) Sect. 15.

(*j*) Sect. 16.

(*k*) Sect. 17.

pointees are chargeable as if they had taken under the will creating the power. Where any property is given for a limited interest, and an absolute power of appointment is given to any person to whom the property would not go in default of appointment, the property is upon the execution of the power charged with duty as if it had been immediately given to the donee of the power after allowing any duty previously paid in respect thereof. Where any property is given with an absolute power of appointment and in default of appointment to the donee of the power, the property is chargeable as if it had been given to the donee in the first instance without the power (*l*). to be charged.

Personal estate directed to be laid out in purchase of real estate is charged with duty as personal estate, unless it is given so as to be enjoyed by different persons in succession, and then each party is to pay duty as if it had not been directed to be laid out in real estate, unless it shall have been actually so laid out before the duty accrued, but no duty shall accrue in respect thereof after it has been so laid out. If before the personal estate is laid out, any person becomes entitled to an estate of inheritance in possession in the real estate to be purchased therewith, the duty is to be charged on it as personal estate and paid thereout (*m*), and this applies not only where the person so becoming entitled is the original donee, but also to every subsequent devolution of the equitable inheritance previously to the money being so laid out (*n*). Personal estate directed to be applied in purchase of real estate.

Estates *pur autre vie* applicable by law as personal estate are charged with duty as personal estate (*o*). Estates *pur autre vie*.

If a legacy is given with a direction to pay the duty out of some other fund, the money applied in payment of the duty is not chargeable with the duty (*p*). Money left to pay duty not chargeable.

Specific legacies and bequests of property not reduced into money are to be valued in the manner pointed out in the Act (*q*). Specific legacies.

Where a legacy is satisfied otherwise than by actual payment, or is released for consideration, or is compounded for, the duty is chargeable on the amount or value of the property taken in satisfaction thereof, or as the consideration for the release thereof, or composition for the same, and where a legacy is given in Duty on legacies not satisfied in money, &c.

(*l*) 36 Geo. 3, c. 52, s. 18.

(*m*) Sect. 19.

(*n*) *In re De Lancey*, L. R. 5 Ex.

102; S. C., *ib.* 7 Ex. 140.

(*o*) 36 Geo. 3, c. 52, s. 20.

(*p*) Sect. 21.

(*q*) Sect. 22.

satisfaction of any other legacy, the duty is not to be paid on both subjects, but on that yielding the largest duty (*r*).

Legatees refusing to accept legacies, duly deducted, to pay costs.

If a legatee refuse to accept his legacy after deducting the duty and to give a proper discharge for it, and if a suit is afterwards instituted for such legacy, the Court may order the legatee so refusing to pay costs (*s*).

Court to provide for duty in administration suits.

In administration suits the Court is to provide for the payment of the duty (*t*).

No legacy liable to duty to be paid without stamped receipt.

No executor may pay a legacy chargeable with duty without taking a receipt for the same, expressing the names of the testator or intestate, and of the executor and legatee, and the amount or value of the legacy, and the amount of the duty, and such receipt must be stamped; and any executor or administrator or legatee paying or receiving a legacy without such receipt is liable to a penalty of £10 (*u*).

As to stamping the receipt.

The receipt must be taken to the head office or some other office of the commissioners to be stamped within twenty-one days after its date, or, upon paying a penalty of 10 per cent. on the duty, within three months after date (*x*), and after the three months the head office may, on payment of the penalty, stamp the receipt, and the commissioners may in certain cases remit the penalty (*y*).

Mistakes as to duty may be rectified.

Where too little duty is paid by mistake, the commissioners may, within three months, if no suit is instituted, accept the difference with 10 per cent. on the difference (*z*).

Power to executors to pay legacies of infants, &c., into court.

Where by reason of infancy or absence beyond the seas of the legatee the executor cannot pay a legacy or residue, he may pay it into Court after deducting the duty (*a*).

As to compounding for duties.

The commissioners may in certain cases, with the sanction of the Court of Exchequer, accept a composition for the duties (*b*).

Refunding duty.

If any legacy or part of residue has to be refunded by reason of debts of the testator or otherwise, the duty is to be repaid.

Executor retaining legacy to transmit particulars to commissioners. Liability to duty depends on domicile.

An executor, to whom a legacy or residue is given, must, before retaining it, transmit the particulars to the commissioners who are to assess the duty thereon (*c*).

The liability to legacy duty on the personal estate depends on the domicile of the deceased at the time of his death, all per-

(*r*) Sect. 23.

(*s*) Sect. 24.

(*t*) 36 Geo. 3, c. 52, s. 25.

(*u*) Sects. 27, 28.

(*x*) Sect. 29.

(*y*) 48 Geo. 3, c. 149, s. 44.

(*z*) 36 Geo. 3, c. 52, s. 30.

(*a*) Sect. 32.

(*b*) Sect. 33.

(*c*) Sect. 36.

sonal estate being supposed to be locally situate in the place where the owner died. If he was domiciled in England at the time of his death, his personal estate both in England and abroad is liable to the duty, but if he was domiciled abroad no duty is payable on his personal estate either in England or abroad (*d*). And where a man who is domiciled abroad at his death makes his will under a general power, the personal property thus appointed is exempt from legacy duty (*e*). But an estate *pur autre vie* in land in England, "applicable by law in the same manner as personal estate," is liable to legacy duty under sect. 20 of 36 Geo. 3, c. 52, although the owner may be domiciled abroad (*f*).

Arrears of legacy and succession duty bear interest at 4 per cent. (*g*).

THE SUCCESSION DUTY ACT, which came into operation on the 19th of May, 1853, contains the following provisions :

Sect. 2 provides, that every past or future disposition of property by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person so entitled by reason of any such disposition or devolution a "succession," and the term "successor" shall denote the person so entitled, and the term "predecessor" shall denote the settlor, disponent, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived.

Sect. 2.  
What dispositions of property confer successions.

Section 3 provides, that when persons have any property

Sect. 3.  
Title by

(*d*) *Thompson v. The Advocate-General*, 12 Clark & Fin. 1; *Re Napier*, 6 Exch. Rep. 217.

(*e*) *In re Wallop's Trust*, 33 L. J.

Ch. 351.

(*f*) *Chatfield v. Berchtoldt*, L. R. 7 C. A. 192.

(*g*) 31 & 32 Vict. c. 124, s. 9.



vested in them jointly by a title not conferring on them a succession, a beneficial interest in such property accruing to any of them by survivorship shall be deemed a succession.

Sect. 4.  
Power of  
appointment.

Section 4 provides, that when a person has a power of appointment under a disposition of property taking effect on the death of a person dying after the time appointed for the commencement of the Act, over property, he shall, in the event of his making an appointment thereunder, be deemed to be entitled, at the time of exercising the power, to the interest appointed as a succession derived from the donor of the power; and where a person has a limited power of appointment under such a disposition over property, the person taking the appointed property will be deemed to take the same as a succession derived from the person exercising the power as predecessor.

Sects. 5, 6.  
Extinction  
of deter-  
minable  
interests  
confers a  
succession  
except in  
certain  
cases.

Section 5 provides, that where property is subject to a charge, estate, or interest determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person on the extinction or determination of the charge, &c., shall be deemed a succession accruing to the person then entitled beneficially to the property or the income thereof: but under section 6, persons entitled, at the time appointed for the commencement of the Act, to real property subject to leases for lives or for years determinable on life, are not liable to duty in respect of the determination of such leases in the event of the same occurring in his life.

Sect. 7.  
Disposition  
accom-  
panied by  
reservation  
of benefit to  
grantor, &c.  
confers a  
succession.

Section 7 provides, that where any disposition of property not being a sale, and not conferring an interest expectant on death on the person in whose favour the same shall be made, is accompanied by a reservation or assurance of, or contract for any benefit to the grantor or any other person for life, or for any period ascertainable only by reference to death, such disposition will confer, at the time appointed for the determination of such benefit, an increase of beneficial interest in such property as a succession equal in annual value to the yearly value of the benefit so reserved, &c.

Sect. 8.

Under section 8, dispositions to take effect at periods depending on death, or made for evading duty, are to confer successions.

Sect. 10.  
Rate of  
duty.

Section 10 provides, that in respect of every such succession as aforesaid, according to the value thereof, the following duties shall be levied and paid (that is to say):—

Where the successor shall be the lineal issue or lineal ancestor of the predecessor, a duty at the rate of one pound *per centum* upon such value :

Where the successor shall be a brother or sister, or a descendant of a brother or sister of the predecessor, a duty at the rate of three pounds *per centum* upon such value :

Where the successor shall be a brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of five pounds *per centum* upon such value :

Where the successor shall be a brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother of the predecessor, a duty at the rate of six pounds *per centum* upon such value :

Where the successor shall be in any other degree of collateral consanguinity to the predecessor than is hereinbefore described, or shall be a stranger in blood to him, a duty at the rate of ten pounds *per centum* upon such value. .

The 11th section provides, that where any person chargeable with succession duty, or with legacy duty under the Legacy Duty Acts, shall be married to a wife or husband of nearer consanguinity to the predecessor, the duty shall be payable as if the wife or husband were the successor. Sect. 11. Provisions as to married persons.

Section 12 provides, that where a person shall take a succession under a disposition made by himself, then, if at the date of such disposition he shall have been entitled to the property expectantly on the death of any person dying after the commencement of the Act, and such person shall have died during the continuance of such disposition, he shall be chargeable with duty on his succession at the same rate as he would have been chargeable if no such disposition had been made ; but a successor is not to be liable to duty in any other case under a disposition made by himself, and no person shall be chargeable with duty upon the extinction or determination of a charge or interest created by himself, unless at the date of the creation thereof he shall have been entitled to the property subjected thereto on the death of some person dying after the time appointed for the commencement of the Act. Sect. 12. What duties payable when successor is also predecessor

Section 13 provides, that where the successor shall derive his Sect. 13. Provision

as to joint  
prede-  
cessors.

succession from more predecessors than one, and the proportional interest derived from each of them shall not be distinguishable, it shall be lawful for the commissioners to agree with the successor as to the duty payable ; but if no such agreement shall be made, the successor shall be deemed to have derived his succession in equal proportions from each predecessor, and shall be chargeable with duty accordingly.

Sect. 14.

Section 14 provides, that where the interest of any successor in personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in possession, but such duty shall be at the highest rate, which, if every such successor had been subject to duty, would have been payable by any of them.

Sect. 15.

Section 15 provides, that where, at the time of the commencement of the Act any reversionary property expectant on death shall be vested by alienation or other derivative title in any person, such person shall be charged with duty at the same time and rate as the original successor would have been chargeable if there had been no alienation, &c., and where, *after* the commencement of the Act, any succession shall, before falling into possession, have become vested by alienation or any title not conferring a new succession in any other person, the duty shall be paid at the same rate and time as if there had been no such alienation, &c., and where the title to any succession shall be accelerated by the surrender or extinction of any prior interest, the duty shall be payable as if there had been no such acceleration.

Sect. 16.  
Gifts to  
charities,  
&c.

Under section 16, property given to any charitable or public purpose is made liable to duty at 10 per cent.

Sect. 17.  
Provision  
for policies  
on life and  
contracts  
for valuable  
considera-  
tion.

Section 17 provides, that no policy of assurance on life shall create the relation of predecessor and successor between the insurers and the assured, and no bond or contract made by any person *bona fide* for valuable consideration in money or money's worth for the payment of money or money's worth after the death of any other person, shall create the relation of predecessor and successor between the parties, but a disposition or devolution of the moneys payable under such policy, bond, or contract, may create a succession.

Sect. 18.  
Exemptions.

The 18th section provides, that where the whole succession or

successions derived from the same predecessor, and passing upon any death to any person or persons, shall not amount in money or principal value to £100, no duty shall be payable, and that no duty shall be payable upon any succession of less value than £20 in the whole, *or* upon any moneys applied to the payment of the duty on any succession according to any trust for that purpose, *or* by any person in respect of a succession, who, if the same were a legacy bequeathed to him by the predecessor, would be exempted from the payment of duty in respect thereof under the Legacy Duty Acts (*h*). And no person shall be charged with duty under this Act in respect of any interest surrendered by him or extinguished before the time appointed for the commencement of this Act. And no person charged with the duties on legacies and shares of personal estate under the Legacy Duty Acts, in respect of any property subject to such duties, shall be charged also with the duty granted by this Act in respect of the same acquisition of the same property.

The 19th section declares that leasehold hereditaments shall no longer be chargeable under the Legacy Duty Acts as belonging to the personal estate of the testator or deceased.

Sect. 19.  
Leaseholds  
to be  
charged  
with suc-  
cession duty  
instead of  
legacy duty.

The 20th section provides, that the duty shall be paid at the time when the successor becomes entitled in possession to his succession, except that if there be a prior charge or interest not created by the successor, the duty in respect of the increased value accruing on the determination of the charge or interest shall be paid at the time of such determination, and except that in case of an annuity or property chargeable as such the duties shall be paid by instalments, and that no duty shall be paid on the determination of a lease at rack rent in respect of the increase accruing to the successor on such determination.

Sect. 20.  
Duties to  
be paid on  
successor  
becoming  
entitled in  
possession.

The 21st section provides, that the interest of a successor in real property shall be taken to be of the value of an annuity equal to the annual value of the property, and that every such annuity shall be valued according to the tables in the schedule annexed to the Act, and the duty chargeable thereon shall be paid by eight equal instalments, the first instalment to be paid at the expiration of twelve calendar months after the

Sect. 21.  
Interest of  
successor in  
real  
property to  
be consid-  
ered as an  
annuity.

(*h*) This exemption applies only to express exemptions in the Legacy Duty Acts, *i.e.*, gift to husband

and wife, to the royal family, and to certain charities: *Attorney-General v. Fitzjohn*, 2 H. & N. 465.

succession falls into possession, and the remaining seven instalments to be paid half-yearly; provided that if the successor die before all the instalments have become due, those that are not due at his decease shall cease to be payable except in the case of a successor who shall have been competent to dispose by will of a continuing interest in such property, in which case the instalments unpaid at his death shall be a continuing charge on such interest in exoneration of his other property, and shall be payable by the owner for the time being of such interest.

Sects. 22 to 28. Section 22 provides, that in estimating the value of lands, houses, &c., an allowance shall be made for all necessary outgoings; and sections 23 to 28 contain rules as to timber, advowsons, property subject to beneficial leases, manors, mines, &c., real estate taken by corporations, and copyhold property.

Sect. 29. Real property directed to be sold to be charged as personality. The 29th section provides, that the interest of any successor in moneys to arise from the sale of real property under any trust for the sale thereof, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, shall be deemed to be personal property chargeable with duty under this Act; provided that where such moneys shall be subject to any trusts for the re-investment thereof in the purchase of other real property to which the successor would not be absolutely entitled, such moneys shall be deemed to be real property, and for the purpose of the Act each successor's interest therein shall be considered to be of the value of an annuity payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall then be the real property subject to the trust or directions for sale, or any property purchased in substitution for it, or any intermediate investment of the produce of the sale of the original property.

Sect. 30. Personal property to be invested in land, how to be charged. Section 30 provides, that the interest of any successor in personal property, subject to any trust for the investment thereof in the purchase of real property to which the successor would be absolutely entitled, shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with the duty under this Act as personal property; and personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would not be

absolutely entitled, shall, so far as the same shall not be chargeable with duty under the Legacy Duty Acts, be chargeable with duty under this Act as real property; and for the purposes of this Act each successor's interest therein shall be considered to be of the value of an annuity payable during his life, or for any less period, during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall be the real property directed to be purchased, or any intermediate investment of the personal property directed to be invested in such purchase.

Section 31 provides, that the value of annuities shall be calculated for the purposes of that Act and the Legacy Duty Acts according to the tables annexed to that Act; and section 32 makes sections 8, 10, 11, 12, 14, and 23 of 36 Geo. 3, c. 52, applicable to personal property comprised in successions.

Sects. 31  
and 32.

The 33rd section declares, that where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him, he shall be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in the property.

Sect. 33.  
Allowance to donee of general power of appointment.

The 34th section provides, that in estimating the value of a succession, no allowance shall be made in respect of any incumbrance created or incurred by the successor, not made in execution of a prior special power of appointment; but an allowance shall be made in respect of all other incumbrances, and for moneys laid out by the successor previously to his possession, in substantial repairs or permanent improvements; and the two following sections contain further provisions as to allowances.

Sects. 34 to  
36.  
What allowance to be made for incumbrances.

Section 38 provides, that where any successor, upon taking a succession, shall be bound to relinquish or be deprived of any other property, the commissioners shall, upon the computation of the assessable value of his succession, make such allowance to him as may be just in respect of the value of such property (*i*).

Sect. 38.  
Allowance to be made in respect of relinquished property.

The 39th, 40th, and 41st sections enable the commissioners to compound duties, and to receive any duty in advance, and to allow discount thereon.

Sects. 39, 40,  
and 41.  
As to compounding and payment in advance of duty.

The 42nd section declares, that the duty imposed by the Act

Sect. 42.  
Duty to be

(*i*) See *re* Micklethwait, 11 Exch. Sibthorpe, *ubi supra*.  
Rep. 452; Attorney-General *v*.

a first  
charge on  
property.

shall be a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed: and such duty shall also be a first charge on the interest of the successor in the personal property in respect whereof the same shall be assessed while the same shall remain in the ownership or control of the successor, or of any trustee for him, or of his guardian or committee, or tutor or curator, or of the husband of any wife who shall be the successor; and the said duty shall be a debt due to the Crown from the successor having, in the case of real property comprised in any succession, priority over all charges and interests created by him, but such duty shall not charge or affect any other real property of the successor than the property comprised in such succession; provided that where any settled real property comprised in a succession shall be subject to any power of sale, exchange, or partition, exercisable with the consent of the successor, or by the successor with the consent of another person, he shall not be disqualified by the charge of duty on his succession from effectually authorising by his consent the exercise of such power or exercising any power with proper consent, as the case may be, and in such case the duty shall be charged substitutively upon the successor's interest in all real property acquired in substitution for the real property before comprised in the succession, and in the meantime upon his interest, also in all moneys arising from the exercise of any such power, and in all investments of such moneys.

Sect. 44.  
What  
persons  
accountable  
for duty.

Sects. 45 to  
50.  
General  
provisions.

Sects. 51 and  
52.  
Receipts  
and certifi-  
cates of  
payment to  
be given.

The 44th section makes trustees and others, as well as the successor himself, personally accountable for the duty.

Sections 45 to 50 relate to the proceedings to be adopted in reference to the payment of the duties; and sections 51 and 52 provide for the delivery of stamped receipts for the duty, and also for the delivery of a certificate of payment to any person interested in the property affected by such duty, on applying for the same, which receipt and certificate will exonerate *bonâ fide* purchasers without notice, notwithstanding any suppression or misstatement in the account upon the footing whereof the same has been assessed.

The following points have been decided on the construction of the Succession Duty Acts:

Succession  
duty

1. That where a testator dies domiciled abroad, succession

duty attaches to his real estate situate in this country, but not to his personal estate on the original bequest thereof; but if personal estate is given by the will of a person domiciled abroad to trustees for the benefit of persons in succession, and the fund is invested by the trustees in this country, succession duty will be payable on all future devolutions under the trusts, though the party on whom it devolve may (like the testator) be domiciled abroad (*j*). And foreign moveable property, *e.g.*, foreign government funds, comprised in a British settlement and vested in trustees subject to British jurisdiction, and recoverable by the beneficiaries in a British court, is subject to succession duty, although the beneficiaries may be domiciled abroad (*k*).

attaches  
irrespective  
of domicile  
of settlor.

2. That a person is liable to succession duty in respect of property to which he succeeds after the commencement of the Act, although he may have become entitled thereto in expectancy before the Act (*l*).

Duty  
attaches  
wherever  
succession  
falls into  
possession  
after Act.

3. That section 2 applies to every case where a person becomes entitled to property by any means upon the death of a person dying after the commencement of the Act, unless such case comes within the operation of some other section. Thus where under a marriage settlement property was settled in trust for the husband and wife successively for life with remainder (in an event which happened) as the wife should by deed or will appoint. The husband died before the Act, and the wife died in 1856, having by her will appointed the property. It was held that as the power came into operation before the commencement of the Act, the case was not within the 4th section; that it was consequently within the general provision of the 2nd section, and that for the purpose of the duty the appointee was the successor and the original settlor the predecessor (*m*).

Sect. 2  
applies to  
all cases of  
succession  
not within  
other  
sections.

So also, where by a marriage settlement property belonging to the wife's father was limited to the husband and wife successively for life with remainder (in the event which happened) as

(*j*) *Wallace v. Attorney-General*, 1 L. R. C. A. 1; *Attorney-General v. Campbell*, *ib.* 5 H. L. 524; *Re Capdevielle*, 33 L. J. Ex. 306; *Re Smith's Trusts*, 12 W. R. 933; *Re Badart's Trusts*, L. R. 10 Eq. 288; *Re Lovelace*, 4 De G. & J. 340; *Re Wallop's Trusts*, 1 De G. J. & S. 656; *Lyall v. Lyall*, L. R. 15 Eq. 1.

(*k*) *Cigala's Settlement Trusts*, L. R. 7 C. D. 351.

(*l*) *Wilcox v. Smith*, 4 Drew. 40; *Attorney-General v. Middleton*, 3 H. & N. 125; S. C. 27 L. J. Ex. 229; see, too, *Attorney-General v. Gell*, 34 L. J. Ex. 145.

(*m*) *Re Lovelace*, 4 De G. & J. 340. See also *in re Barker*, 7 H. & N. 109; S. C. 30 L. J. Ex. 404.



wife should by deed or will appoint. The wife by deed appointed the property to her father, the original settlor, who died in 1831, having devised it to a stranger in blood. The wife survived her husband, and died after the commencement of the Act. It was held that as no duty would have been payable by the father if he had survived his daughter, he being himself the predecessor as well as successor, the case was not within the 15th section; that it therefore came within the general provision of the 2nd section, and that a duty of 10 per cent. was payable by the devisee of the father (*n*).

4. That if A. dies intestate, leaving two sons, B. and C., and afterwards B. dies intestate, leaving his brother C. his heir, he B. and not A. is the predecessor, and 3 per cent. is payable notwithstanding the Act 3 & 4 W. 4, c. 106, sec. 2 (*o*).

Construc-  
tion of 4th  
section.

5. That the words in the 4th section, "taking effect on the death of a person dying after the commencement of the Act," refer to the power of appointment, and not to the disposition by which the power is created, or to the disposition made under the power (*p*).

6. That under the 4th section the donee of a general power taking effect on a death happening since the commencement of the Act, becomes, by exercising the power, the successor as to the estate appointed, as if such estate had been limited to him by the original instrument, and if such donee so exercises the power as to create a succession, the appointee pays duty upon a succession derived from the donee, and not from the original settlor (*q*).

Where a  
charge in  
reversion is  
created for  
a valuable  
considera-  
tion in  
money or  
money's  
worth, and  
settled,  
purchaser is  
predecessor.  
Marriage is  
not a  
valuable

7. That if A., entitled to property in remainder expectant on a life estate, for a valuable consideration in money or money's worth, charges his remainder with a sum of money in favour of B., and B. settles the sum so charged, duty will be payable on that sum on the death of the tenant for life, and for this purpose B. (and not A.) will be considered the predecessor (*r*).

8. That marriage is not a valuable consideration in money or money's worth within the meaning of the 17th section (*s*).

(*n*) *Attorney-General v. Gardner*, 32 L. J. Ex. 84.

(*o*) *Lord Saltoun v. Advocate-General*, 3 Macq. 659.

(*p*) *In re Lovelace, ubi supra*.

(*q*) *Attorney-General v. Upton*, 1 L. R. Ex. 224.

(*r*) *Re Jenkinson*, 24 Beav. 64; *Attorney-General v. Yelverton*, 7 H. & N. 306; 30 L. J. Ex. 333. See also *in re Ramsay's Settlement*, 30 Beav. 75.

(*s*) *Floyer v. Banks*, 33 L. J. Ch. 1.

9. That if A. is tenant for life with remainder to his eldest son B. in tail, and on B. coming of age, A. and B. disentail the property and make a re-settlement under which B. takes a rent-charge during the joint lives of A. and B., and subject to such rent-charge the property is limited to A. for life with remainder to B. for life, with remainder to B.'s first and other sons in tail, &c., B.'s life estate is a succession under a disposition made by himself alone within the meaning of the 12th section, and not a succession derived from joint predecessors under the 13th section, and consequently B. on the death of A. will be liable to duty, and for this purpose the original settlor remains the predecessor (*t*). consideration within sect. 17. Construction of 12th and 13th sections.

10. That in the case mentioned in the last paragraph, B. is entitled, under section 38, to a deduction for the annuity which he loses on A.'s death, and for this purpose it makes no difference whether the re-settlement was before or after the Act (*u*). Construction of 38th section.

11. That if a father and son tenants for life and in tail re-settle the property, and by such re-settlement charge it with a portion for a younger son of the father, duty is payable by such younger son at 3 per cent. as on a succession derived from his brother. The charge is not an alienation under the 15th section (*v*). Construction of 15th section.

12. That a title by descent is a derivative title within the meaning of the 1st branch of the 15th section. Thus, where a testator devised property to his wife for life with remainder to R.: R. died in 1844 intestate, and the wife died in 1859; it was held that the heir of R. must pay the same duty as R. would have been liable to, if living (*w*). It will be observed that the words "not conferring a new succession" are not inserted in the first branch, and it is apprehended that if R. in the above case had died after the Act came into operation, the devolution to his heir would have been a new succession, and duty at 1 per cent. only payable.

(*t*) Attorney-General *v.* Sibthorpe, 3 H. & N. 424; Lord Braybrooke *v.* Attorney-General, 9 H. of L. Ca. 150; Attorney-General *v.* Floyer, 31 L. J. Ex. 404. See also Attorney-General *v.* Baker, 4 H. & N. 19.

(*u*) Lord Braybrooke *v.* Attorney-General, *ubi supra*; Commissioners of Inland Revenue *v.* Harrison, L.R.

7 H. L. 1; Le Marchant *v.* Commissioners of Inland Revenue, L. R. 10 Exch. 292.

(*v*) Attorney-General *v.* Cecil, L. R. 5 Exch. 263.

(*w*) Attorney-General *v.* Rushton, 33 L. J. Ex. 184. But see Attorney-General *v.* Littledale, L. R. 5 Ex. 275; S. C. *ib.*, 5 H. L. 290.

13. That where a succession is aliened and falls into possession after the death of the alienor, duty under section 15 is at same rate as if alienor had survived the falling into possession (*x*).

14. That where the original reversioner under a settlement of personalty has died before the Act, having by will bequeathed the reversion, and such reversion falls into possession after the Act, legacy duty under the will of the reversioner is payable, but no succession duty (*y*).

15. That if A., tenant for life, and B., tenant in remainder, join in conveying the fee simple to C. as purchaser, and C. dies before A., having devised to D. in fee, D. pays duty on his succession from C., but is not liable to further duty on the death of A. (*z*).

Construc-  
tion of 21st  
section.

16. That the competency to dispose by will referred to in the 21st section relates to the quantity of interest, and not to the personal capacity of the individual, and consequently the circumstance that the person becoming entitled to the succession and dying before all the instalments of duty are payable, was insane or a *feme covert*, does not exempt the estate of such person from the remaining instalments (*a*). And a tenant in tail who disentails, and thus acquires the fee, and afterwards dies before all the instalments have become payable, is not within the exemption (*b*).

Construc-  
tion of 22nd  
section.

17. That the term "necessary outgoings" in section 22 does not include the property-tax, nor the cost of collecting rent during the absence of the owner abroad, nor the expenses of management incurred by trustees under a power of management conferred on them by the will (*c*).

Construc-  
tion of 34th  
section.

18. That mortgages made by a tenant for life and remainderman under a joint power of appointment reserved to them are incumbrances created by the remainderman within the meaning of the 34th section, and consequently that the latter is not entitled to any deduction in respect of them (*d*).

(*x*) *Sol.-Gen. v. Law Reversionary Interest Society*, L. R. 8 Ex. 234.

(*y*) *Attorney-General v. Little-  
dale*, L. R. 5 H. L. 290; *Re Chap-  
man's Trusts*, 2 H. & M. 447.

(*z*) *Re Cooper & Allen's Contract*,  
L. R. 4 C. D. 802.

(*a*) *Attorney-General v. Hallett*,  
2 H. & N. 368.

(*b*) *Attorney-General v. Lord Lil-  
ford*, 34 L. J. Ex. 44; 2 L. R. H. of  
L. 63.

(*c*) *In re Elwes*, 3 H. & N. 719;  
S. C. 28 L. J. Ex. 46; *Re Earl Cow-  
ley*, L. R. 1 Ex. 288.

(*d*) *Re Peyton*, 7 H. & N. 265;  
*Attorney-General v. Lorton*, 11 Ir.  
Com. Law Rep. 429.

19. That the term "annual value" in the 26th section means present actual annual value, and that such value, and not possible or prospective annual value, is the basis on which succession duty is to be calculated. Consequently, where at the time when the succession accrued land was stated to be incapable of being sold or let profitably as building land, or of being used productively for agricultural or other purposes, and the Crown admitted such statement to be true, it was held by the House of Lords that no duty was payable, although the land was a few years afterwards sold at a high price as building land. It was intimated, however, by some of the law lords in giving judgment, that, but for the admission by the Crown the property would probably have been held to have a present annual value at the time when the succession accrued; for that, if it was saleable at all, the annual value might have been treated at 3 per cent. on the purchase-money, or such an annuity as might have been purchased with the amount for which the land would sell (e).

Construction of term "annual value" in 26th section.

20. That a certificate from the Inland Revenue Office that the duty has been paid, discharges the lard, and the purchaser can require no further evidence on the subject (f).

Certificate of Inland Revenue Office conclusive.

The following Table is annexed to the succession Duty Act, and is applicable for the purpose of legacy duty as well as succession duty.

*The Value of an Annuity of £100 per Annum held on a Single Life.*

Years of Age.	Values.			Years of Age.	Values.		
	£	s.	d.		£	s.	d.
Birth.	1,892	8	6	14	1,817	7	6
1	1,906	13	0	15	1,800	8	6
2	1,919	2	0	16	1,783	13	0
3	1,926	8	0	17	1,767	16	0
4	1,928	16	0	18	1,753	5	6
5	1,926	19	6	19	1,740	11	0
6	1,921	12	0	20	1,729	9	6
7	1,913	4	6	21	1,719	17	0
8	1,902	16	6	22	1,713	1	0
9	1,890	19	6	23	1,706	16	6
10	1,878	3	0	24	1,700	11	6
11	1,864	7	0	25	1,694	0	0
12	1,849	12	0	26	1,686	14	6
13	1,833	18	6	27	1,677	5	6

(e) Attorney-General v. Earl of Sefton, 34 L. J. Ex. 98.

(f) Earl Howe v. Earl of Lichfield, L. R. 2 Ch. App. 155.

Years of Age.	Values.			Years of Age.	Values.		
	£	s.	d.		£	s.	d.
28	1,667	1	0	62	914	2	0
29	1,656	1	0	63	883	6	0
30	1,644	7	6	64	852	9	0
31	1,632	0	0	65	821	12	6
32	1,619	0	6	66	790	15	0
33	1,605	4	0	67	761	19	0
34	1,590	9	6	68	733	8	6
35	1,574	17	6	69	705	4	0
36	1,558	9	6	70	677	9	0
37	1,541	10	6	71	650	8	0
38	1,524	0	0	72	623	19	6
39	1,506	1	6	73	597	7	6
40	1,487	10	0	74	569	13	0
41	1,468	4	0	75	541	0	6
42	1,447	11	6	76	511	9	6
43	1,426	2	0	77	477	17	0
44	1,403	10	0	78	444	9	6
45	1,379	14	6	79	412	9	6
46	1,354	16	6	80	381	3	0
47	1,328	2	6	81	350	14	6
48	1,300	9	6	82	321	14	6
49	1,271	19	6	83	292	10	0
50	1,242	19	6	84	263	2	0
51	1,213	17	0	85	234	18	6
52	1,185	14	0	86	207	16	0
53	1,157	17	6	87	184	11	6
54	1,130	13	0	88	164	17	6
55	1,103	18	0	89	148	7	0
56	1,077	10	0	90	133	9	0
57	1,051	10	0	91	122	16	0
58	1,025	10	0	92	107	7	0
59	999	1	0	93	93	3	0
60	972	1	0	94	79	8	6
61	943	15	6	95	64	11	0

## No. I.

WILL *giving all the testator's property to his WIFE.*

OF ALL TO  
WIFE

THIS IS THE LAST WILL of me, A. B., of, &c. I give all my property to my dear wife Mary, and appoint her the sole executrix of this my will. IN WITNESS whereof I have set my hand to this my will the — day of — 18 —.

(*Signature of testator.*)

Signed by the above named A. B., as his last will in the presence of us, both being present at the same time, who in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

(*Names and addresses of witnesses.*)

## No. II.

WILL *giving all the testator's property to his WIFE for life and then to his CHILDREN (a very short form) (a).*

OF ALL TO  
WIFE AND  
CHILDREN.

THIS IS THE LAST WILL of me, A. B., of, &c. I appoint C. D., of, &c., and E. F., of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will: and I appoint my wife during her life and after her death my trustees, to be the guardian and guardians of my infant children: I GIVE all my property unto my trustees, IN TRUST to convert into money the same, and invest the proceeds in any investments authorised by law for trust funds, with power to vary such investments at their discretion: AND to pay the income of the proceeds to my wife during her life and after her death to divide the corpus equally among all my children who being sons have attained or shall attain the age of 21 years, or being daughters have attained or shall attain that age, or shall marry. AND I empower my trustees to postpone the conversion of any part of my pro-

Appoint-  
ment of  
executors,  
trustees and  
guardians.

Gift of all  
the property  
to trustees  
to convert,  
and pay the  
income to  
wife, and  
after her  
death divide  
corpus  
among  
children

Power to  
postpone  
conversion.

(a) Sometimes a solicitor is called on to make a will for a person *in extremis*, when there is not time for the more elaborate trusts and pro-

visions contained in precedent No. III. In such a case the above Precedent may be used.

Devise of  
trust and  
mortgage  
estates.

perty for so long as they shall think fit, and the income of unconverted property shall, from the time of my death, go in the same manner as the income of the proceeds thereof would have been applicable if the same had been converted (b). AND I devise all property (if any) vested in me as a trustee or mortgagee unto my trustees subject to the trusts and equities affecting the same (b).

IN WITNESS, &c.

### No. III.

OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

WILL of REAL (c) and PERSONAL ESTATE; BEQUEST of PLATE, FURNITURE, &c., and a LEGACY to WIFE. BEQUESTS of other LEGACIES; DEVISE and BEQUEST of residue to TRUSTEES upon trust for SALE and CONVERSION; TRUSTS of moneys to pay FUNERAL and TESTAMENTARY expenses and DEBTS, and to INVEST residue, and to vary securities. TRUSTS of RESIDUE to pay the income to WIFE for life, and after her death for TESTATOR'S CHILDREN, and remoter issue as WIFE shall appoint, and in default of appointment amongst CHILDREN; PROVISIO that ISSUE of deceased children shall take their PARENT'S SHARE; POWERS of MAINTENANCE, ACCUMULATION, and ADVANCEMENT; POWER to suspend sale and conversion of real and personal estate; POWER to LEASE real estate until sale; POWER to appoint NEW TRUSTEES; DEVISE and BEQUEST of TRUST and MORTGAGED estates; APPOINTMENT of EXECUTORS and GUARDIANS.

Appoint-  
ment of  
executors  
and trustees  
and declara-  
tion that  
trusts, &c.,  
may be  
exercised by  
survivors,  
&c.

I, A. B. of, &c., DO HEREBY REVOKE all former wills and testamentary dispositions made by me, and declare this to be my last will and testament. I appoint C. D., of, &c., E. F., of, &c., and G. H., of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will: AND I DECLARE

(b) The power to postpone conversion and the devise of trust and mortgage estates may be omitted if time presses.

(c) Even if the testator has no real

estate at the time of making his will, it is desirable to extend the devise to real estate, because it is possible that he may acquire some before his death.

that all trusts and powers hereinafter reposed and vested in my trustees may be exercised by the survivors or survivor of them or the heirs, executors, or administrators of such survivor or other the trustees or trustee for the time being of this my will: AND I APPOINT my said wife during her life and after her death my trustees or the survivors or survivor of them to be the guardian and guardians of my infant children: I GIVE all my plate, linen, china, glass, books, pictures, prints, wines, liquors, furniture, and other household effects, and all my carriages and horses to my dear wife ——— absolutely, and I ALSO GIVE to her the sum of £——, to be paid within one calendar month after my decease. I BEQUEATH the following legacies, free from legacy duty, that is to say (*legacies*): I DEVISE AND BEQUEATH all my real and personal estate not hereby otherwise disposed of, unto my trustees: UPON TRUST that my trustees shall sell, call in, and convert into money the same or such part thereof as shall not consist of money, and shall with and out of the moneys produced by such sale, calling in, and conversion, and with and out of such part of my personal estate as shall consist of money, pay my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will or any codicil hereto, and shall with the consent in writing of my said wife during her life, and after her decease at the discretion of my trustees, invest the residue of the said moneys, with power for my trustees from time to time with such consent or at such discretion as aforesaid to vary such investments, AND SHALL stand possessed of the said residuary trust moneys, and the investments for the time being representing the same (hereinafter called the residuary trust funds), UPON the trusts following (that is to say), IN TRUST to pay the income thereof to my said wife during her life, and from and after her decease, IN TRUST for such child or children or grandchild or grandchildren of mine at such ages or times (not being earlier as to any object of this power than his or her age of twenty-one years or day of marriage), and in such shares and manner as my said wife shall by any deed or by her will appoint; AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all my children who being sons [have attained or (*d*)] shall attain the age of twenty-one years or being daughters [have attained or (*d*)] shall attain

OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

Appoint-  
ment of  
guardians.

Gift of plate,  
&c., to wife,  
and a  
legacy.

Other  
legacies.

Devise and  
bequest of  
residue of  
real and  
personal  
estate to  
trustees, in  
trust to sell,  
and convert  
and invest  
proceeds.

To pay  
income to  
wife for  
life, and  
after her  
death, for  
children or  
grandchild-  
ren as wife  
shall ap-  
point, and  
in default of  
appoint-  
ment  
for children  
equally.

(*d*) If all the children are under twenty-one and unmarried at the date of the will, the words "have attained or," will be omitted.



OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

Proviso  
that share  
of child  
dying before  
testator  
shall go to  
his or her  
children.

Hotchpot  
clause.

Advance-  
ment  
clause.

Power to  
postpone  
sale and  
conversion.

that age, or shall marry, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: PROVIDED ALWAYS [that if any child of mine shall die in my lifetime leaving a child or children who shall survive me, and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then and in every such case, and in default of any appointment by my said wife to the contrary, the last-mentioned child or children shall take (and if more than one, equally between them) the share which his, her, or their parent would have taken of and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years (e) : PROVIDED ALSO] that no child [or grandchild] of mine who or any of whose issue shall take any part of the residuary trust funds under any such appointment as aforesaid shall be entitled to any share of the unappointed part of the residuary trust funds without bringing the share or shares appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly, unless my said wife shall by any such appointment as aforesaid direct the contrary : AND I DECLARE that my trustees may, with the consent in writing of my said wife during her life, and after her decease at the discretion of my trustees, raise any part or parts not exceeding together one moiety of the expectant share of any child or grandchild under this my will, and apply the same for his or her advancement, preferment, or benefit, as my trustees, with such consent or at such discretion as aforesaid, shall think fit : AND I ALSO DECLARE that my trustees may postpone the sale and conversion of my real and personal estate, or any part thereof, for so long as they shall think fit (f), and that the rents, profits, and income to accrue

(e) It seems desirable as a general rule to provide for the case of a child of the testator dying in his lifetime leaving issue, as otherwise if such event should happen, it would be necessary for the testator to make a codicil. But if the relative ages of the testator and his children are such that it is improbable that any child dying before the testator will leave issue, or the provision is otherwise not desired, the words in brackets may be omitted.

(f) In cases where the nature of the testator's property renders it advisable, the following words may be added :

"And that, notwithstanding that the property the sale or conversion whereof shall be so postponed, may be of leasehold tenure, or may be otherwise of a perishable or wearing-out

from and after my decease of and from such part of my estate as shall from the time being remain unsold and unconverted, shall after payment thereof of all incidental expenses and outgoings to be paid and applied to the person or persons and in the manner to whom and in which the income of the moneys produced by such sale and conversion would for the time being be payable or applicable under this my will if such sale and conversion had been actually made: AND I ALSO DECLARE that my trustees may let any hereditaments for the time being remaining unsold either from year to year, or for any term of years, at such rents and subject to such covenants as they shall think fit, and may accept surrenders of leases and tenancies, fell timber and other trees standing on the said hereditaments, whether for sale, repairs, or otherwise, and generally may manage the same in such manner as they shall think fit, and the proceeds of any timber sold by my trustees shall be considered as income, and paid and applied accordingly: AND I ALSO DECLARE that all moneys liable to be invested under this my will may be invested (g) in or upon any stocks, funds, or securities of

OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

Power to  
manage  
unsold  
property.

Investment  
clause.

nature, and if any part of my estate shall be of a reversionary nature, the same shall not be sold or converted into money until it falls into possession, unless my trustees shall think it probable that a loss will arise to my estate by postponing the sale and conversion thereof, and I declare that the rents, &c." (*as above*).

(g) One of the following forms of an investment clause may, if desired, be substituted for that in the text:—

1. In or upon any stocks, funds, or securities of or guaranteed by the Government of the United Kingdom or any British colony or dependency [or any foreign state], or the debentures securities, stocks, or shares of any railway or other company in the United Kingdom or India, or upon real or leasehold securities in England or Wales [or real or heritable or leasehold securities in the United Kingdom], such leasehold securities being held for a term whereof sixty years shall be unexpired at the time of such investment, or upon the security of any life interest in real or personal property, together with a policy or policies of assurance on the life of the person for whose life such interest shall be holden: And in lending money, &c. (*as above*).

OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

or guaranteed by the Government of the United Kingdom or of any British colony or dependency, or in stock of the Bank of England, or the bonds or debentures or debenture stock or guaranteed or preference stock or shares of any railway or other company in Great Britain or India incorporated by Act of Parliament or Royal Charter, and paying a dividend on its ordinary stock or shares or upon any debentures or debenture stock issued under the Local Loans Act, 1875, or upon real or leasehold securities in England or Wales, but not elsewhere, such leasehold securities being held for a term whereof sixty years at least shall be unexpired at the time of such investment: AND in lending money on any mortgage security my trustees may accept whatever title or evidence of title shall appear to them sufficient, and in particular may in the case of leasehold securities waive the production of the lessor's title, without being answerable for any loss arising thereby, and my trustees may release any part of the property comprised in any mortgage security if satisfied that the remaining property is a sufficient security for the money owing thereon [AND I ALSO DECLARE that my trustees may if they think fit lend money on any such security as aforesaid in conjunction with money advanced by any other person or persons by way of contributory loan, and in such case the security may be taken in the joint names of the several contributories or any two or more of them, or in the joint names of any two or more persons to be nominated by the several contributories or such other arrangement may be made in relation thereto, as my trustees may think fit.] AND I ALSO DECLARE (h) that the power of appointing

Power to  
lend on  
contribu-  
tory  
mortgages.

Provision  
as to

2. In or upon any stocks, funds, or securities authorised by law as investments for trust funds.

3. In or upon Government or real securities, or the stocks, shares, or securities of British or Indian Railway Companies.

(h) It is considered that the statutory power may safely be relied on in ordinary cases, but if it is preferred to insert in the deed an express power, the following may be substituted for the clause in the text:—

Power to  
appoint new  
trustees.

AND I DECLARE that if the trustees hereby appointed or any of them shall die in my lifetime, or if they or any of them or any future trustee or trustees of this my will shall die, or go to reside abroad, or shall desire to retire from or refuse or become incapable to act in the trusts of this my will before the same

new trustees conferred by statute shall for the purposes of this my will be vested in my said wife during her life, and upon any appointment under the said statutory power the number of trustees may be altered, provided that it be not reduced below two: I DEVISE all estates vested in me as a trustee or mortgagee unto my trustees subject to the trusts and equities affecting the same respectively, but so that the money secured by any mortgage shall form part of my personal estate (i).

IN WITNESS, &c.

OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

appointment  
of  
new  
trustees.

Devise of  
trust and  
mortgaged  
estates.

shall be fully performed, then and in every such case it shall be lawful for my said wife during her life, and after her decease for the continuing trustees or trustee for the time being of this my will, or if there shall be no continuing trustee, then for the retiring or refusing trustees or trustee, or the executors or administrators of the last acting trustee, to appoint any other person or persons to be a trustee or trustees, in the place of the trustee or trustees so dying, or going to reside abroad, or desiring to retire, or refusing or becoming incapable to act as aforesaid, with liberty upon any appointment to alter the number of trustees, but so that, immediately after each such appointment, the number shall be not less than two: AND UPON every such appointment the trust premises shall be so transferred as to become vested in the new trustee or trustees, either jointly with the continuing trustee or trustees or solely as the case may require: AND every such new trustee (as well before as after the said trust premises shall have become vested in him) shall have all the powers and authorities of the trustee for whom he shall be substituted.

(i) If either of the trustees is a solicitor, add—

“AND I DECLARE that the said C. D. and any future trustee of this my will who may be a solicitor, shall be entitled to charge my estate for all business done by him in relation to my estate, or the trusts of this my will, in the same manner as he would have been entitled to charge my executors and trustees for the same if he had not been himself an executor or trustee, but had been employed by my executors and trustees to do such business as their solicitor.”

## No. IV.

OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

---

WILL of REAL and PERSONAL ESTATE for the benefit of the WIFE and CHILDREN of the testator, similar to last PRECEDENT, except that the WIFE has NO POWER of APPOINTMENT among the ISSUE; Expression of TESTATOR'S WISH that ESTATE shall not be administered in CHANCERY, and Declaration that COSTS of SUIT shall in certain cases come out of SHARES of PARTIES instituting same. (In paragraphs.)

I, A. B. of, &c., hereby revoke all former wills and testamentary dispositions, and declare this to be my last will and testament.

1. I APPOINT, &c. (*Appointment of executors, trustees, and guardians, supra*, p. 448).

2. Gift of plate, &c., and a pecuniary legacy to wife.

2. I GIVE all my plate, linen, china, glass, books, pictures, prints, wines, liquors, furniture, and other household effects unto my dear wife — absolutely, and I also give to her the sum of £——, to be paid within one calendar month after my decease.

3. Other legacies.

3. I GIVE the following legacies free from legacy duty, that is to say: To, &c. (*legacies*).

4. General devise and bequest of real and personal estate to trustees

4. I DEVISE AND BEQUEATH all my real and personal estate, not hereby otherwise disposed of unto my trustees, UPON TRUST that my trustees shall sell, call in, and convert into money the same or such part thereof as shall not consist of money, and shall with and out of the money produced by such sale, calling in, and conversion, and with and out of such part of my personal estate as shall consist of money, pay my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will or any codicil hereto, and shall, with the consent in writing of my said wife during her life, and after her decease at the discretion of my trustees, invest the residue of the said moneys, with power for my trustees from time to time, with such consent or at such discretion as aforesaid, to vary the said investments, AND SHALL stand possessed of the said residuary trust moneys, and the investments for the time being representing the same (hereinafter called the residuary trust funds), IN TRUST to pay the income thereof to my said wife during her life, and after her decease, IN TRUST for all my children, who being

and invest residue.

Trusts of residuary funds, to pay income to wife for life; after her death for children

sons [have attained or] shall attain the age of twenty-one years, or being daughters [have attained or] shall attain that age or shall marry, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: [PROVIDED ALWAYS that if any child of mine shall die in my lifetime leaving a child or children who shall survive me, and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then and in every such case the last-mentioned child or children shall take (and if more than one, equally between them) the share which his, her, or their parent would have taken of and in the residuary trust funds if such parent had survived me and attained the age of twenty-one years (*k*).]

OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

equally,  
sons at  
twenty-one,  
and  
daughters  
at twenty-  
one or  
marriage.  
Provide that  
children  
dying before  
testator  
shall  
take their  
parents'  
share.

5. MY trustees may, with the consent in writing of my said wife during her life, and after her decease at the discretion of my trustees, raise any part or parts not exceeding together one moiety of the expectant share of any child [or grand-child] under this my will, and apply the same for his or her advancement, preferment, or benefit, as my trustees, with such consent or at such discretion as aforesaid, shall think fit.

5. Advance-  
ment clause.

6. MY trustees may postpone the sale and conversion of my real and personal estate, or any part thereof, for so long as they shall think fit (*l*), and the rents, profits, and income to accrue from and after my decease of and from such part of my real and personal estate as shall for the time being remain unsold and unconverted, shall after payment thereof of all incidental expenses and outgoings be paid and applied to the person or persons, and in the manner to whom and in which the income of the moneys produced by such sale and conversion would for the time being be payable or applicable under this my will if

6. Power to  
postpone  
sale and  
conversion.

(*k*) See *ante*, p. 450, note (*e*).

(*l*) In cases where the nature of the testator's property renders it advisable, the following words may be added:—

“And that, notwithstanding that the property, the sale or conversion whereof shall be so postponed, may be of leasehold tenure, or may be otherwise of a perishable or wearing-out nature, and if any part of my estate shall be of a reversionary nature, the same shall not be sold or converted into money until it falls into possession, unless my trustees shall think it probable that a loss will arise to my estate by postponing the sale and conversion thereof, AND the rents, &c.” (*as above*).

OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

Power to  
manage  
unsold  
property.

7. Invest-  
ment clause.

8. Provision  
as to  
appoint-  
ment of  
new  
trustees.

9. Devise  
and bequest  
of trust and  
mortgaged  
estates.

10. Expres-  
sion of wish

such sale and conversion had been actually made: AND my trustees may let any hereditaments for the time being remaining unsold either from year to year or for any term of years, at such rent and subject to such covenants as they shall think fit, and may accept surrenders of leases and tenancies, fell timber and other trees standing on the said hereditaments, whether for sale, repairs, or otherwise, and generally may manage the same in such manner as they or he shall think fit, and the proceeds of any timber sold by my trustees shall be considered as income, and paid and applied accordingly.

7. ALL moneys liable to be invested under this my will may be invested, &c. (*supra*, p. 451).

8. THE power of appointing new trustees conferred by statute shall for the purposes of this my will be vested in my said wife during her life, and upon any appointment under the said statutory power the number of trustees may be altered, provided that it be not reduced below two.

9. I DEVISE all estates vested in me as a trustee or mortgagee unto my trustees, subject to the trusts and equities affecting the same respectively, but so that the money secured by any mortgage shall form part of my personal estate.

10. IT is my particular wish (*m*) that my estate shall not be

(*m*) It seems to be the practice of the Court to allow any person beneficially interested in the residue of a testator's estate, and if a beneficiary is an infant, any person who chooses to call himself the next friend of such infant, to institute a suit against the executors and trustees for the administration of the estate, *i.e.*, to have the accounts taken by the Court, and the expense of such suit will, in most cases, be paid out of the estate. Such suits are often attended with heavy expense, and it is a serious hardship that when a testator has appointed persons in whom he feels confidence to manage and wind up his affairs, the management may at any time be taken out of their hands, and the estate subjected to the more costly administration of the Court at the instance of one only of several persons beneficially interested, or even in the case of an infant at the instance of any person calling himself a next friend, but who may be, and often is, a stranger to the family, the nominee of a solicitor to whom the institution of the suit is a source of profit.

It is suggested that if a testator wishes, as far as possible, to prevent his estate being thrown into Chancery after his death, without sufficient cause, the above clause might have a useful effect. It may, perhaps, be objected to the clause that it is unfair to an infant who is helpless in the matter that his share should be made liable to the costs of a suit instituted by his assumed next friend; but, on the other hand, the fact that this will be the result, will probably help to deter even unscrupulous persons from undertaking the office of a next friend, and will also help to induce the Court to stop a suit so instituted on the ground of its not being for the interest of the infant.

It is conceived that there is no legal objection to the validity of the above clause. A condition forfeiting a legacy in case of the legatee taking

administered in the High Court of Justice, and in order to avoid (as far as I can) the necessity for any application to the said Court, I HEREBY DECLARE that (in addition to all powers conferred by law on executors and trustees) my executors or executor for the time being and my trustees respectively shall have full power to settle all questions which may arise in the management and administration of my estate, or any trust property held under this my will, and also all questions as to the proper construction of this my will, or any clause herein contained, and all other questions whatsoever which may arise in relation to my estate or any trust property held under this my will, in such manner as they or he shall in their or his discretion under the advice of counsel or otherwise think fit. AND I FURTHER DECLARE that if any person beneficially interested under this my will shall either himself or herself, or being an infant or *feme covert* or otherwise under disability shall by his or her next friend, institute any suit or other proceeding in the said Court for the administration of my estate, or of any trust fund held under this my will, and shall not allege and prove to the satisfaction of the Court, that the executors or trustees, executor or trustee, against whom such suit is instituted, have or has been guilty of some wilful default or breach of trust, rendering such suit necessary to save my estate from loss, then and in such case the costs of such suit, or those costs which, in the absence of this clause, would be payable out of my estate generally, or out of the said trust fund, shall be paid exclusively out of the share or shares of the plaintiff or plaintiffs therein, and if more than one rateably and in proportion to the amount of their respective shares.

OF REAL  
AND  
PERSONAL  
ESTATE UPON  
TRUST FOR  
WIFE AND  
CHILDREN.

that estate  
shall not be  
adminis-  
tered in  
Court.

11. (*If either of the trustees is a solicitor*) add clause enabling him to charge, *supra*, p. 453.)

IN WITNESS, &c.

any proceedings in relation to anything contained in the will has been held repugnant and void (*Rhodes v. Muswell Hill Land Company*, 29 Beav. 560); but the clause in question is of a very different nature.



## No. V.

OF REAL AND  
PERSONAL  
ESTATE FOR  
WIDOW AND  
CHILDREN.

WILL of REAL and PERSONAL estate; BEQUEST of JEWELS, &c., to WIFE; BEQUEST of PLATE, BOOKS, &c., to trustees for WIFE during WIDOWHOOD, and afterwards for testator's ELDEST SON; BEQUEST of FURNITURE, &c., to trustees for WIFE during WIDOWHOOD, and afterwards to sink into RESIDUE; DEVISE and BEQUEST of RESIDUE of REAL and PERSONAL estate upon trust to sell and convert and invest proceeds; INCOME for WIFE during WIDOWHOOD, and afterwards for CHILDREN equally; Usual Powers and Provisions.

Bequest to  
wife of  
jewels, &c.

Bequest of  
plate, &c.,  
to trustees  
for wife  
during  
widowhood,  
and after-  
wards for  
eldest son  
attaining  
twenty-one.

Bequest of  
leasehold  
house and  
furniture  
to trustees  
for wife  
during  
widowhood,  
she paying  
rent, &c.,

and after-  
wards to  
fall into  
residue.

I, A. B., of, &c., do hereby revoke all former wills and testamentary dispositions, and declare this to be my last will and testament: I appoint, &c. (*Appointment of executors, trustees, and guardians, supra*, p. 448): I GIVE and confirm to my dear wife all the jewels, trinkets, and personal ornaments worn or used by her in my lifetime; and I also give to her all my wines, liquors, and other consumable stores, and all my horses and carriages, for her absolute use and benefit: I GIVE all my plate and plated articles, books, pictures, and prints, unto my trustees, IN TRUST to permit my said wife to use and enjoy the same during her life, if she shall so long continue my widow, and from and after her decease or second marriage (which shall first happen), IN TRUST for such son of mine as shall first attain the age of twenty-one years: I GIVE my leasehold dwelling-house, being No.—, &c. (*describing it*), and all my furniture and household effects being in or about or appropriated or belonging to the said dwelling-house, other than and not being plate or plated articles, books, pictures, or prints, unto my trustees, IN TRUST to permit my said wife to occupy the said dwelling-house and to use and enjoy the said furniture and household effects during her life if she shall so long continue my widow, she paying the ground rent, and all rates, taxes, and outgoings payable in respect of the said dwelling-house, and observing and performing the covenants contained in the lease under which the same is or at my decease shall be held: AND I DECLARE that from and after the decease or second marriage of my said wife (which shall first happen),

the said dwelling-house, furniture, and household effects, shall fall into and form part of my residuary estate: AND I DIRECT that my trustees shall, as soon as conveniently can be after my decease, cause an inventory to be made of the plate, plated articles, books, pictures, and prints, and also the furniture and other household effects hereinbefore bequeathed for the benefit of my said wife during her widowhood, and that one copy of such inventory be signed by my trustees, and delivered to my said wife, and that another copy thereof be signed by my said wife, and retained by my trustees: AND I DECLARE that after the delivery to my said wife of the several chattels and effects, the use whereof is hereinbefore given to her during her widowhood, my trustees shall not be obliged to see to the preservation of the same chattels and effects or any of them, nor be answerable for any loss or injury thereof which may happen during the widowhood of my said wife: AND I ALSO DECLARE that my trustees shall not be bound to see that my said wife duly pays the rent and observes and performs the covenants and conditions reserved by and contained in the lease of my said dwelling-house, nor shall they be liable for or in respect of any forfeiture or loss which may arise by reason or in consequence of the non-payment by my said wife of the said rent, or the breach by her of any of the said covenants and conditions: AND I ALSO DECLARE that it shall be lawful for my trustees at any time or times during the widowhood of my said wife with her consent in writing, to sell the said dwelling-house and also the said furniture and other household effects bequeathed therewith, or any of them, or any part thereof respectively, and in such case the moneys to arise from such sale shall sink into and form part of my residuary personal estate: I GIVE, &c. (*Devise and bequest of the residue of testator's real and personal estate to trustees, upon trust to sell and convert same, and invest proceeds, with power to vary investments, supra, p. 449*): AND shall stand possessed of the said residuary trust moneys and the investments for the time being representing the same (hereinafter called the residuary trust funds), IN TRUST to pay the income thereof to my said wife during her life if she shall so long continue my widow, and from and after her decease or second marriage (which shall first happen), IN TRUST for, &c. (*trust for children, supra, p. 449*). AND I DECLARE that my trustees shall, after the decease or second marriage of my said wife, apply, &c. (*Advancement*

OF REAL AND PERSONAL ESTATE FOR WIDOW AND CHILDREN.

Trustees to make an inventory.

Trustees not to be bound to see to preservation of chattels.

Trustees not to be bound to see that wife pays rent, &c.

Power for trustees with consent of wife to sell house, furniture, &c.

Devise and bequest of residue.

Trusts of residuary proceeds for wife during widowhood, afterwards for children attaining twenty-one &c.

OF REAL AND  
PERSONAL  
ESTATE FOR  
WIDOW AND  
CHILDREN.

Provision  
as to  
appoint-  
ment of  
new trus-  
tees.

*clause ; Powers to postpone sale and conversion and to manage, unsold property ; Investment Clause, supra, pp. 450 to 452) :*

AND I DECLARE that the power of appointing new trustees conferred by statute shall, for the purposes of this my will, be vested in my said wife during her widowhood, and upon any appointment under the said statutory power the number of trustees may be altered, provided that it be not reduced below two (*Devise of trust and mortgage estates, supra, p. 453*).

IN WITNESS, &C.

## No. VI.

OF  
FREEHOLD  
AND  
COPYHOLD  
AND  
PERSONAL  
ESTATE FOR  
BENEFIT OF  
CHILDREN.

WILL of a WIDOWER ; DEVISE and BEQUEST of REAL and PERSONAL ESTATE (*except copyholds*) to trustees in trust to sell and convert ; DEVISE of COPYHOLDS to such USES as trustees shall APPOINT in exercise of trust for SALE ; TRUSTS of PROCEEDS of sale and conversion, to pay FUNERAL and TESTAMENTARY expenses, DEBTS, and LEGACIES, and divide surplus between CHILDREN equally, EXCEPT that the share of ELDEST SON who has received an advance shall be reduced by the amount of such advance ; MARRIED DAUGHTER'S share to be charged with sum covenanted to be paid by marriage settlement ; Share of INFANTS to be invested for their benefit ; POWER to sons to PURCHASE real estate at a VALUATION ; Usual Powers and Provisions.

I, A. B., of, &c., hereby revoke all former wills and testamentary dispositions, and declare this to be my last will and testament :

I appoint (*Appointment of executors, trustees, and guardians, supra, p. 448*). AND WHEREAS I have five children by my late wife C. B. deceased, viz., G. B., H. S., the wife of R. S., of, &c., I. B., K. B., and L. B., of whom the said G. B. and H. S. have attained the age of twenty-one years, and my other children are under that age : AND WHEREAS I lately paid the sum of £800 in the purchase of a commission in the army for the said G. B. : AND WHEREAS, by the settlement made on the marriage of my said daughter H. S. with the said R. S., which settlement is

Recital that  
testator has  
five  
children.

That tes-  
tator had  
paid  
money for  
benefit of  
eldest son.  
That on  
daughter's

dated the — day of —, I covenanted with — (*names*), the trustees named in the said settlement, for the payment to them by my executors or administrators, within twelve calendar months after my decease, of the sum of £2000, with interest for the same after the rate of £4 per cent. per annum, computed from my decease, to be held by the said trustees upon the trusts therein declared for the benefit of my said daughter and her husband and issue: NOW I HEREBY GIVE AND DEVISE such part of my messuage, farm, and lands, situate at —, as is of freehold tenure, and all other (if any) my real estate (except copyhold hereditaments, and except also estates vested in me as a trustee or mortgagee), and all my moneys, securities for money, and other personal estate and effects whatsoever unto my trustees, their heirs, executors, administrators, and assigns: AND I GIVE AND DEVISE such part of the said messuage, farm, and lands as is of copyhold tenure, and all other (if any) my copyhold lands and tenements, TO THE USE of such person or persons and in such manner (*a*) as my trustees shall by any deed or deeds, for the purpose of carrying into effect any sale made under the trust hereinafter in that behalf declared, appoint: AND IN DEFAULT of and until such appointment I give and devise the same unto, and to the use of my trustees, their heirs and assigns, AND I DECLARE that my trustees shall sell, call in, and convert into money the said real and personal estate (including copyhold hereditaments), hereinbefore devised and bequeathed or such part thereof as shall not consist of money, and shall with and out of the moneys to arise from such sale, calling in, and conversion, and with and out of the moneys of which I shall be possessed at my death, pay my funeral and testamentary expenses and debts (other than the said sum of £2000 covenanted to be paid in and by the said marriage settlement of my said daughter H. S.), and shall stand possessed of the residue of the said moneys, IN TRUST for all my children

OF  
FREEHOLD  
AND  
COPYHOLD  
AND  
PERSONAL  
ESTATE FOR  
BENEFIT OF  
CHILDREN.

marriage he  
had cove-  
nanted to  
pay a cer-  
tain sum to  
trustees on  
his decease.

Devise of  
real and  
personal  
estate  
(except  
copyholds)  
to trustees.

Devise of  
copyholds to  
such uses as  
trustees  
shall  
appoint,  
and in  
default of  
appoint-  
ment to use  
of trustees.

Declaration  
that trust-  
ees shall,  
out of  
proceeds of  
sale and  
conversion,  
pay debts,

and hold  
residue in

(*a*) Where part of the testator's property is copyhold, and he intends that it shall be sold after his death, the proper course is to give to the trustees a power of appointment over it. Under such a power the trustees may on a sale appoint the property to the purchaser, who will be entitled to require admittance without the intermediate admittance of the trustees, and thus a single instead of a double fine is payable. If, however, an immediate sale is not contemplated, there is no advantage in the plan, because the lord of the manor will be entitled at any time before a sale to require the trustees to be admitted, and in default of such admittance to seize the land *quousque* for want of a tenant.

OF  
FREEHOLD  
AND  
COPYHOLD  
AND  
PERSONAL  
ESTATE FOR  
BENEFIT OF  
CHILDREN.

trust for  
children, so  
that eldest  
son's shall  
be less by  
amount  
advanced to  
him than  
the share of  
the others.

Proviso that  
daughter's  
share shall  
be exclu-  
sively  
charged  
with sum  
covenanted  
to be paid  
to her  
trustees.

Accruer  
clause.

Proviso that  
issue of  
children  
dying before  
testator  
shall take  
their  
parent's  
share.

Declaration  
shares of  
infants  
shall be  
invested.

Power of  
advance-  
ment.

as tenants in common, to be divided between them in such manner that the share of my said son G. B. shall be less in amount than the share of each of my other children by the sum of £800, and that the shares of my other children shall be equal : PROVIDED ALWAYS, and I declare (b), that the share of my said daughter H. S. shall be charged with the payment to the trustees of her marriage settlement of the said sum of £2000, thereby covenanted to be paid by my executors or administrators as aforesaid, and with the interest of the same, in exoneration of the residue of my estate and effects: PROVIDED ALWAYS, and I declare that if any child of mine living at my decease being a son shall die under the age of twenty-one years, and without leaving issue, or being a daughter shall die under that age and without having been married, as well the original share of every or any child so dying, as also any share or shares accruing to him or her under this provision, shall go to the others of my children in equal shares: PROVIDED ALSO, and I further declare that if any child of mine shall die in my lifetime, leaving a child or children who shall survive me, and being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then and in every such case the last-mentioned child or children shall take (and if more than one, equally between them) the share (as well original as accruing) which his, her, or their parent would have taken under this my will if such parent had survived me and attained the age of twenty-one years: PROVIDED ALWAYS, and I declare that if any child or grandchild of mine entitled in expectancy to a share of the said residuary trust funds under this my will shall at my death be under the age of twenty-one years, my trustees shall invest the expectant share of each such minor with power to vary the investments thereof from time to time, and the income that shall be applicable for his or her maintenance under the statutory provision in that behalf (c): AND I ALSO DECLARE that my trustees may at any time or times raise any part or parts not exceeding together one moiety of the expectant share of any minor under the trusts of this my will, and apply the same for his or her preferment, advancement, or

(b) It is assumed that the settlement contains a provision for settling H. S.'s after-acquired property, so that the share she takes under the will will become subject to such settlement.

(c) See p. 450, *supra*, as to maintenance clause.

benefit, in such manner as my trustees shall think fit (*Power to postpone sale and conversion, and to manage, supra*, p. 455): PROVIDED ALWAYS, and I declare that if either of my sons having attained the age of twenty-one years shall within twelve calendar months after my death, by a notice in writing, to be given to my trustees or any one of them, offer to purchase the hereditaments hereby devised and bequeathed in trust for sale or any part thereof, then and in such case the same hereditaments shall be sold to the son making such offer at a price to be agreed on between my trustees and my said son, or if they are unable to agree, then at a price to be determined by the valuation of two indifferent persons, one to be chosen by each party or by an umpire to be chosen by the two valuers before they proceed to act in the valuation: AND I FURTHER DECLARE that if two or more of my said sons shall offer to purchase the same hereditaments under the option hereinbefore given to my said sons in that behalf the preference shall be given to the eldest of the sons making such offer: PROVIDED ALWAYS, that no purchaser of any hereditaments under the trust for sale hereinbefore declared, shall be bound or concerned to see or inquire whether any of my sons shall have made such offer to purchase as aforesaid, nor be affected by notice that such offer has been made (*Investment Clause, supra*, p. 451). AND I DECLARE that upon any exercise of the statutory power to appoint new trustees, the number of trustees may be altered, provided that it be not reduced below two (*Devise of trust and mortgage estates, supra*, p. 453).

OF  
FREEHOLD  
AND  
COPYHOLD  
AND  
PERSONAL  
ESTATE FOR  
BENEFIT OF  
CHILDREN.

Power to  
sons to  
purchase  
real estate  
at a  
valuation.

Provision as  
to appoint-  
ment of  
new  
trustees.

IN WITNESS, &c.

## No. VII.

OF REAL  
AND  
PERSONAL  
ESTATE—  
DAUGHTERS'  
SHARES TO  
BE SETTLED.

---

WILL of REAL and PERSONAL ESTATE; *Trust for SALE and CONVERSION and INVESTMENT of PROCEEDS; Income for WIFE for life, Remainder for CHILDREN equally; Shares of DAUGHTERS for themselves for life, with power to appoint a LIFE INTEREST to their respective HUSBANDS, and subject thereto for their ISSUE as they may respectively appoint; And in default of appointment for CHILDREN equally; In default of CHILDREN, as each DAUGHTER may appoint; Subject to appointment for TESTATOR'S other CHILDREN, equally; Accruing Shares to be subject to TRUSTS of Original Share; Power of Advancement as to Shares of CHILDREN and GRANDCHILDREN; Power to trustees on marriage of each DAUGHTER to revoke TRUSTS declared of her Share, and settle same on other trusts.*

Trusts for  
children  
equally.

Declaration  
that trust-  
tees shall  
hold share  
of each  
daughter in  
trust to pay  
income to  
her for life  
for separate  
use,

with power  
to appoint

I, A. B., of, &c. (*Commencement of will, appointment of executors, trustees and guardians; devise and bequest of real and personal estate to trustees, upon trust for sale and conversion, and for the investment of the proceeds, with power to vary the investments from time to time, and for payment of income to wife for life, supra*, pp. 448, 449): AND FROM AND AFTER the decease of my said wife, IN TRUST for my children who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, to be divided between them in equal shares, and if there shall be only one such child, the whole to be in trust for that one child: PROVIDED ALWAYS, and I declare that my trustees shall retain the share of each of my daughters of and in the residuary trust funds upon the trusts following (that is to say), UPON TRUST to pay the income thereof to my same daughter during her life, and so that if and while she shall be under coverture the same shall be for her sole and separate use, and she shall not have power to dispose of the same in the way of anticipation, but with power nevertheless

for my same daughter at any time, whether she shall be covert or sole, to appoint, by deed or will, that after her decease the whole or any part of such income shall be paid to any husband of her who may survive her during his life or any less period : AND FROM AND AFTER the decease of such daughter, and subject to any appointment which may be made to her husband as aforesaid, IN TRUST for such child, children, or remoter issue of my same daughter in such shares (if more than one) and in such manner as she shall, by any deed or deeds, or by her will, and whether under coverture or not, appoint, AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for the children of my same daughter, who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, in equal shares, and if there be one only such child, the whole to be in trust for that one child, BUT SO NEVERTHELESS that no child who or any of whose issue shall take a share under any such appointment as aforesaid, shall take any part of the trust funds remaining unappointed without bringing the share appointed to him or her or to his or her issue into hotchpot and accounting for the same accordingly, unless my daughter making such appointment as aforesaid shall thereby direct the contrary : AND IN CASE there shall be no child of my same daughter who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, then UPON SUCH TRUSTS and in such manner as my same daughter shall by deed or will when not under coverture or by will while under coverture appoint, AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for my other children, who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, in equal shares, and so that the share or shares accruing to each or any daughter of mine under this trust shall be subject to the trusts hereby declared concerning the original share of the same daughter under this my will : PROVIDED ALWAYS, and I hereby declare that if any child of mine shall die in my lifetime leaving a child or children who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, then and in every such case the last mentioned child or children shall take (and if more than one, equally between them) the share to which his, her, or their parent would have been entitled of and

OF REAL  
AND  
PERSONAL  
ESTATE—  
DAUGHTERS'  
SHARES TO  
BE SETTLED.

life interest  
to husband,  
and subject  
thereto for  
issue of  
daughter  
as she shall  
appoint,

in default of  
appoint-  
ment for  
children of  
daughter  
equally.

Hotchpot  
clause.

If no issue  
of daughter  
then as  
daughter  
shall  
appoint,

in default  
of appoint-  
ment, for  
testator's  
other  
children,  
daughter's  
accruing  
shares to be  
similarly  
settled.

Proviso that  
issue of  
children  
dying  
before tes-  
tator shall  
take parent's  
share.



OF REAL  
AND  
PERSONAL  
ESTATE—  
DAUGHTERS'  
SHARES TO  
BE SETTLED.

Advance-  
ment  
clause,

Power to  
trustees on  
marriage of  
any  
daughter  
with her  
consent to  
revoke  
trusts of her  
share, and  
re-settle  
same.

With power  
to pay a  
part to  
daughter  
absolutely.

in the residuary trust funds if such parent had survived me and attained the age of twenty-one years, including any share or shares which would have accrued to such parent under the trust and provision in that behalf hereinbefore contained : AND I DECLARE that my trustees may at any time or times raise any part or parts not exceeding together one moiety of the vested or expectant share of any son or grandchild of mine under the trusts of this my will and apply the same for his or her advancement, preferment, or benefit as my trustees shall think fit, but so that no such moneys shall be raised and applied as aforesaid during the existence of any prior interest or interests therein under this my will, without the consent in writing of the person or persons having such prior interest or interests, which consent in the case of a *feme covert* shall be effective notwithstanding her coverture : PROVIDED ALWAYS, and I hereby declare that it shall be lawful for my trustees, at any time or times in contemplation of the marriage of any daughter of mine, with the consent in writing of such daughter if she shall be of full age, but if not, then at the discretion of my trustees by any deed or deeds to revoke the trusts, powers, and provisions hereinbefore declared and contained concerning the share (as well original as accruing) of such daughter of and in the residuary trust funds or any part thereof, and by the same or any other deed or deeds to resettle the same share, or the part thereof to which such revocation shall extend, upon such trusts, and with and subject to such powers and provisions for the benefit of such daughter and her husband and issue, or any one or more of them, as my trustees with such consent as aforesaid, shall think fit, with liberty for them either to act themselves as the first trustees of such settlement, or to nominate any other persons or person to act either alone or in conjunction with them or any of them as such trustees, and so also that such settlement may contain such powers as to the investment of the trust funds, and the varying of such investments, and such other powers and provisions as may be deemed proper and convenient : PROVIDED ALSO that it shall be lawful for my trustees with the consent of my said wife if she shall be living, and if she shall be dead, at the discretion of my trustees, to raise out of the share the trusts whereof shall be so revoked as aforesaid, any sum of money not exceeding the sum of £—, and to pay the money to be so raised to the daughter so about to marry as aforesaid

for her absolute use, or otherwise to apply the same for her benefit as my trustees shall think fit. (*Powers to postpone sale and conversion, and to manage unsold property; Clauses as to investments and appointment of new trustees; Devise of trust and mortgage estates; supra, pp. 450 to 453.*)

IN WITNESS, &c.

OF REAL  
AND  
PERSONAL  
ESTATE—  
DAUGHTERS'  
SHARES TO  
BE SETTLED.

### No. VIII.

WILL of REAL and PERSONAL estate; BEQUEST of ANNUITY to WIFE, and LEGACIES to all the CHILDREN except the ELDEST SON; RESIDUE to the ELDEST SON.

OF ANNUITY  
TO WIFE,  
LEGACIES TO  
YOUNGER  
CHILDREN,  
AND  
RESIDUE TO  
ELDEST SON.

I, A. B., of, &c. (*commencement and appointment of executors, trustees, and guardians, supra, pp. 448, 449; Bequest of furniture, &c., and a legacy to wife*): I GIVE to my said wife an annuity of £—— during her life, to be paid to her by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months after my decease: I GIVE to each of my children (other than my eldest son ——) who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, the sum of £5000, free from legacy duty: AND IF any child (other than my eldest son) shall die in my lifetime leaving issue, then and in every such case I give the legacy of £5000, which each or any such child would have taken under this my will if he or she had survived me and attained the age of twenty-one years, to his or her children (if any) who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, and if there shall be only one such child, the whole to go to that one child: AND I DECLARE that if at my decease any child or grandchild of mine presumptively entitled to a legacy, or a share of a legacy under the aforesaid bequests, shall be under the age of twenty-one years, and being a female shall be also unmarried, then and in every such case my trustees shall retain the presumptive legacy or share of such minor, and invest the same, with liberty from time to time to vary the investments thereof, and shall apply the whole or such part as they or he shall think fit of the income of the same legacy or

Bequest of annuity to wife for life.

Bequest of a legacy to each younger son attaining twenty-one and to each daughter attaining that age, or marrying. Legacies of children dying before testator to go to their issue (if any).

Legacies of infants to be retained and invested.

and income applied for maintenance.

OF ANNUITY  
TO WIFE,  
LEGACIES TO  
YOUNGER  
CHILDREN,  
AND  
RESIDUE TO  
ELDEST SON.

Surplus to  
be accu-  
mulated.

Advance-  
ment clause.

Legacies  
which fail  
to vest to  
sink into  
residue.

Devise and  
bequest of  
residue.

Trusts of  
proceeds,

to appro-  
priate in £3  
per Cents. a  
fund to  
answer  
annuity.

Residue to  
eldest son.  
But if he  
dies under  
age, then  
for his  
children

share, for or towards the maintenance or education of such minor until the same legacy or share shall become vested, or he or she shall previously die: AND SHALL during such suspense of absolute vesting as aforesaid invest the surplus (if any) of the said income, and the resulting income thereof, so as to accumulate at compound interest, to the intent that such accumulations may be added to the principal of the said legacy or share, and follow the destination thereof, with liberty nevertheless for my trustees to resort to the accumulations of any preceding year or years, and to apply the same for or towards the maintenance or education of the infant for the time being presumptively entitled thereto: AND I DECLARE that my trustees may at any time or times raise any part or parts not exceeding together a moiety of the presumptive legacy or share of any child or grandchild of mine, being an infant, and apply the same for his or her preferment, advancement, or benefit, as my trustees shall think fit: AND I DECLARE that if any of the legacies hereinbefore bequeathed shall fail to become absolutely vested in any person or persons under this my will, every such legacy and the accumulations thereof, and the investments representing the same, or such part thereof as shall not have been applied for the advancement of any minor presumptively entitled thereto as aforesaid, shall fall into and form part of my residuary estate. (*Devise and bequest of residuary real and personal estate to trustees in trust to sell and convert, supra*, p. 449): AND SHALL with and out of the moneys produced by such sale and conversion as aforesaid, and with and out of the moneys of which I shall be possessed at my death, pay my funeral and testamentary expenses and debts, and the legacies hereby bequeathed, and the legacy duty thereon, AND SHALL also appropriate and invest in the £3 per Cent. Annuities such a sum of money as will, when invested, be sufficient with the income thereof to pay and satisfy the said annuity of £—hereinbefore given to my said wife, and shall retain the same as a fund to answer the said annuity, and shall stand possessed of the residue of the said moneys, and also of the fund set apart to answer the said annuity subject to the same annuity (hereinafter called the said residuary moneys), IN TRUST for my eldest son G. B.: PROVIDED ALWAYS, that if the said G. B. shall die in my lifetime, or shall survive me and die under the age of twenty-one years, then and in such case my trustees

shall stand possessed of the said residuary moneys IN TRUST for the child or children (if any) of my said son G. B., who being male shall attain the age of twenty-one years, or being female shall attain that age or marry, and if there shall be no such child as last aforesaid, then IN TRUST for such son of mine (other than the said G. B.) as shall first attain the age of twenty-one years: AND I DECLARE that if the said G. B., or other the person entitled in expectancy to the said residuary moneys or any part thereof under this my will, shall be under the age of twenty-one years at my decease, my trustees shall invest the same, with liberty from time to time to vary the investments thereof: AND my trustees may at any time or times during the minority of the said G. B., or any other person for the time being entitled in expectancy to the said residuary moneys or any part thereof under this my will, raise out of the same moneys any sum or sums not exceeding together the sum of £——, and may apply the same for the advancement, preferment, or benefit of such minor as my trustees shall think fit. (*Power to postpone sale and conversion, and to manage; Investment clause; Devise of trust and mortgage estates; supra, pp. 450 to 453.*)

IN WITNESS, &c.

OF ANNUITY  
TO WIFE,  
LEGACIES TO  
YOUNGER  
CHILDREN,  
AND  
RESIDUE TO  
ELDEST SON.

attaining  
twenty-one,  
&c., and if  
no child,  
then for  
such son of  
testator as  
shall first  
attain  
twenty-one.  
Direction to  
invest  
residue  
during  
infancy.  
Advance-  
ment  
clause.

## No. IX.

WILL of REAL and PERSONAL ESTATE; DEVISE of *House and Lands* to TRUSTEES in Trust to MANAGE and APPLY RENTS and PROFITS for Benefit of SON During his MINORITY, and to CONVEY same to him on his attaining Twenty-one; In case of decease of SON during Minority, the Property to fall into Residue; DEVISE and BEQUEST of RESIDUE of Real and Personal Estate upon Trust for SALE and CONVERSION, and to pay income to WIFE for life; and after death of Wife for CHILDREN; Usual powers and provisions.

DEVISE OF  
HOUSE AND  
LAND TO  
INFANT SON,  
AND DEVISE  
AND  
BEQUEST OF  
RESIDUE IN  
TRUST FOR  
WIFE AND  
CHILDREN.

I, A. B., of, &c. (*commencement of will and appointment of executors, trustees, and guardians, supra, pp. 448, 449*): I GIVE AND DEVISE my messuage or dwelling-house in which I am now residing, called ——, together with the pleasure grounds, lands,

Devise of  
lands to son,  
on his  
attaining  
twenty-one.

DEVISE OF  
HOUSE AND  
LAND TO  
INFANT SON,  
AND DEVISE  
AND  
BEQUEST OF  
RESIDUE IN  
TRUST FOR  
WIFE AND  
CHILDREN.

Power to  
trustees to  
apply rents  
and profits  
of estate  
during  
minority of  
son for his  
benefit.

Devise and  
bequest of  
residue of  
real and  
personal  
estate.

gardens, outbuildings, and appurtenances thereunto belonging, or therewith usually held or enjoyed, and also all that piece and parcel of land, situate and being —, which I lately purchased of —, and which is now in the tenure or occupation of —, his under-tenants or assigns, unto my trustees, IN TRUST that if my son F. B. shall be under the age of twenty-one years at my decease, my trustees shall enter into, and during the minority of the said F. B. remain in the possession or receipt of the rents and profits of the said messuage and premises, and manage the same with power to let the same for any term of years not exceeding seven years in possession, and shall apply the whole or such part as they shall think fit of the said rents and profits, for or towards the maintenance and education of the said F. B., and shall invest the surplus (if any) of the said rents and profits, and all the resulting income thereof, so as to accumulate at compound interest, with power to resort to the accumulations of any preceding year or years, and to apply the same for the maintenance and education of my said son: AND upon further trust that if and when the said F. B. shall attain the age of twenty-one years my trustees shall convey the said messuage and premises to him in fee simple, and shall transfer to him the said accumulations, or so much thereof, as shall not have been applied as aforesaid. But if the said F. B. shall die under the age of twenty-one years, then my trustees shall stand seised and possessed of the said messuage and premises and accumulations upon the trusts hereinafter declared concerning my residuary real and personal estate. I GIVE, DEVISE, AND BEQUEATH all my real and personal estate not hereby otherwise disposed of, unto my trustees, &c. (*Devise and bequest of real and personal estate, upon trust for sale and conversion into money, and for investment and varying securities, and to pay income to wife for life, and after her decease for testator's children; Power of advancement; Direction as to mode of sale; Power to postpone sale and conversion, and to manage; Clauses as to investments and appointment of new trustees; Devise of trust and mortgage estates; supra, pp. 449 to 453.*)

IN WITNESS, &c.

## No. X.

WILL of REAL and PERSONAL estate ; BEQUEST of PLATE FURNITURE, &c., to Testator's TWO MARRIED DAUGHTERS equally, for their SEPARATE USE ; DEVISE and BEQUEST of RESIDUARY REAL and PERSONAL estate to Trustees upon usual trust for SALE and CONVERSION, and INVESTMENT ; Trusts of PROCEEDS as to ONE MOIETY for one DAUGHTER and her HUSBAND and ISSUE,—as to OTHER MOIETY for other DAUGHTER and her HUSBAND and ISSUE,—with CROSS executory trusts ; Usual powers and provisions.

OF REAL  
AND  
PERSONAL  
ESTATE FOR  
TWO  
MARRIED  
DAUGHTERS  
AND THEIR  
RESPECTIVE  
HUSBANDS  
AND ISSUE.

I, A. B., of, &c. (*commencement and appointment of executors and trustees and declaration that trusts, &c., shall be exercisable by survivors, &c., see supra, pp. 448, 449*): I GIVE all my jewels, trinkets, plate, linen, china, glass, books, pictures, prints, furniture, and household effects, to my two daughters, G. H., the wife of I. H., of, &c., and K. M., the wife of L. M., of, &c., for their respective separate use, to be distributed between them by my trustees in such manner as shall be agreed on between my said two daughters, or in case of any difference, as shall be settled by my trustees, whose decision shall be final : AND IF either of my said daughters shall die in my lifetime, then I bequeath the said jewels and other articles to the other of my said daughters, AND IF both of my said daughters shall die in my lifetime, then the same shall fall into and form part of my residuary estate (*Devise and bequest of residuary real and personal estate to trustees, upon trust to sell and convert, and out of proceeds to pay funeral and testamentary expenses, and debts and legacies, and invest residue, supra, p. 449*): AND SHALL stand possessed of the said residuary moneys, and the investments for the time being representing the same (hereinafter called the residuary trust funds), UPON the trusts following (that is to say), AS TO one moiety thereof, IN TRUST to pay the income of such moiety to my said daughter, G. H., during her life, and so that during the lifetime of her present or any future husband, the same shall be for her sole and separate use, and so that she shall not have power to

Bequest of  
jewels, &c.,  
to two  
daughters  
equally.

If one  
daughter  
dies before  
testator, the  
whole to  
the other of  
them.

If both die,  
to fall into  
residue.

Devise and  
bequest of  
residue on  
usual trusts  
for sale and  
conversion  
and invest-  
ment of  
proceeds.

Trusts of  
proceeds,  
as to one  
moiety,

OF REAL  
AND  
PERSONAL  
ESTATE FOR  
TWO  
MARRIED  
DAUGHTERS  
AND THEIR  
RESPECTIVE  
HUSBANDS  
AND ISSUE.

to pay in-  
come to one  
daughter  
for life.

With power  
to appoint  
a life in-  
terest to her  
husband.

Afterwards  
for issue as  
same shall  
appoint.

In default  
of appoint-  
ment, for  
children  
equally.

Hotchpot  
clause.

In default  
of issue, for  
appointees  
of same  
daughter.

In default  
of appoint-  
ment, upon  
same trusts  
as other  
moiety.

As to other  
moiety,  
upon  
similar  
trusts for  
other  
daughter  
and her  
issue.

dispose thereof in the way of anticipation, but with power for the said G. H., by any deed or deeds, or by her will, to appoint that after her decease the whole or any part of the said income shall be paid to the said I. H., or to any future husband of her who may survive her, during his life, or for any less period : AND AFTER the decease of the said G. H., and subject to any such appointment in favour of her husband as aforesaid, IN TRUST for such child, children, or remoter issue of the said G. H., whether by the said I. H., or by any future husband, in such shares (if more than one) and in such manner as the said G. H. shall by any deed or deeds, or by her will, whether under coverture or not, appoint ; AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said G. H., who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child, BUT so that no child who or any of whose issue shall take any share under any such appointment as aforesaid shall participate in the unappointed part of the said moiety, without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the said G. H. shall by such appointment direct the contrary : AND IF there shall be no child of the said G. H., who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then IN TRUST for such person or persons, and in such manner as the said G. H. shall by any deed or deeds, or by her will, whether under coverture or not, appoint : AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, UPON THE TRUSTS, and with and subject to the powers and provisions hereinafter declared concerning the other moiety of the residuary trust funds, or such of them as shall be then subsisting and capable of taking effect : AND AS TO THE OTHER MOIETY of the residuary trust funds, in trust to pay the income thereof to my said daughter, K. M., &c. (*Trusts in favour of K. M., her husband and issue, and her appointees, similar to those declared of the first moiety, mutatis mutandis*) : AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, UPON THE TRUSTS, and with and subject to the powers and provisions hereinbefore declared and con-

tained concerning the first-mentioned moiety of the said residuary trust funds, or such of them as shall be then subsisting, and capable of taking effect: AND I DECLARE that my trustees may at any time or times raise any part or parts not exceeding together one moiety of the vested or presumptive share of any child or remoter issue, either of the said G. H. or of the said K. M., under the trusts of this my will, and may either pay the moneys to be so raised as aforesaid to such child or remoter issue, or otherwise apply the same for his or her preferment, advancement, or benefit, as my trustees shall think fit, but so that no moneys shall be raised under this power during the continuance of any prior interest or interests in the same moneys under this my will, without the consent in writing of the person or persons having such prior interest or interests. (*Power to postpone sale and conversion, and to manage unsold property: Investment clause; Provision as to appointment of new trustees; and Devise of trust and mortgage estates, supra, pp. 450 to 453.*)

OF REAL  
AND  
PERSONAL  
ESTATE FOR  
TWO  
MARRIED  
DAUGHTERS  
AND THEIR  
RESPECTIVE  
HUSBANDS  
AND ISSUE.

Advance-  
ment  
clause.

IN WITNESS, &c.

## No. XI.

WILL of a BACHELOR; DIRECTION to APPROPRIATE a LEGACY for EACH of his SISTERS to be SETTLED upon her and her ISSUE, with POWER to APPOINT a LIFE INTEREST to a HUSBAND; RESIDUE to Testator's BROTHER absolutely

BEQUEST OF  
LEGACIES TO  
SISTERS TO  
BE SETTLED  
RESIDUE TO  
BROTHER.

I, A. B., of, &c. (*commencement and appointment of executors and trustees and declaration that trusts, &c., shall be exercisable by survivors, &c., see supra, pp. 448, 449*): I GIVE, &c. (*Bequest of Legacies*): I GIVE, &c. (*Devise and bequest of residue of real and personal estate to trustees, in trust to sell and convert, and out of proceeds to pay funeral and testamentary expenses, debts and legacies, supra, p. 449*): AND SHALL, with and out of the residue of the said moneys, appropriate and set apart a sum of £5000 for each of my five sisters (*naming them*), to be held upon the trusts hereinafter declared concerning the same, and shall stand possessed of the surplus of the said residuary moneys, IN TRUST for my brother (*naming him*), his executors, administrators, and assigns: AND I DECLARE that my trustees shall stand possessed of each of the said several sums of £5000 hereinbefore directed

Devise and  
bequest of  
residue.

Trust to  
appropriate  
legacy for  
each of  
testator's  
sisters.

Surplus to  
be in trust  
for brother.

Trustees to  
hold each  
appropriated  
legacy,



BEQUEST OF  
LEGACIES TO  
SISTERS TO  
BE SETTLED,  
RESIDUE TO  
BROTHER.

in trust to  
invest same  
and pay  
income to  
sister for  
separate use  
with power  
to appoint  
life interest  
to husband,

and subject  
thereto in  
trust for  
her issue as  
she shall  
appoint.

In default  
of appoint-  
ment, for  
her chil-  
dren  
equally.

Hotchpot  
clause.

In default of  
issue, to fall  
into residue.

to be appropriated for my said five sisters respectively, UPON TRUST that my trustees shall invest the same sum of £5000 with liberty to vary the investments thereof from time to time, and shall stand possessed of the same sum of £5000 and the investments thereof, UPON the trusts following (that is to say), IN TRUST to pay the income thereof to the sister for whom the same shall have been appropriated as aforesaid during her life, and so that if and while she shall be under coverture, the same shall be for her sole and separate use, without any power for her to dispose thereof in the way of anticipation, but with power for her to appoint by deed or will that the whole or any part of the said income shall be paid to any husband of her who may survive her during his life, or for any less period; AND FROM AND AFTER her decease, and subject to any appointment which may be made to any husband of her as aforesaid, IN TRUST for such child, children, or remoter issue of my same sister in such shares (if more than one) and in such manner as my same sister shall, by deed or will, appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of my same sister who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be only one such child, the whole to be in trust for that one child, BUT so that no child who or any of whose issue shall take any share under such appointment shall take any share of the unappointed part of the said legacy without bringing the share or shares appointed to him or her, or to his or her issue, into hotchpot, and accounting for the same accordingly, unless the sister making such appointment shall thereby direct the contrary; AND IN CASE there shall be no issue of my same sister in whom the same sum of £5000, or the investments representing the same shall become absolutely vested under the trusts aforesaid, then and in such case, and subject to the said trusts, the same sum of £5000, or the investments representing the same, shall sink into and form part of the surplus of my residuary estate, for the benefit of my said brother (name), his executors, administrators, and assigns. (*Advancement clause; Power to postpone sale and conversion; Investment clause, supra*, pp. 450, 451; *Devise of trust and mortgage estates, supra*, p. 453.)

IN WITNESS, &c.

## No. XII.

WILL of a SPINSTER; BEQUEST of LEGACIES to CHARITIES; BEQUEST of LEGACIES to BROTHERS; also a LEGACY upon trust for Testatrix's SISTER and her ISSUE; LEGACIES to NEPHEWS and NIECES of Testatrix, being some of the children of a deceased sister; BEQUEST of another LEGACY upon trusts for a MARRIED NIECE and her HUSBAND and ISSUE; BEQUEST of another LEGACY upon trust for a NEPHEW (being an improvident person) and his WIFE and CHILDREN; LEGACY to Trustees for the benefit of a Lunatic BROTHER during his life, and then to fall into residue; AUTHORITY to Trustees to make an allowance to an Improvident BROTHER; Other LEGACIES and ANNUITIES; RESIDUE to BROTHER of Testatrix.

OF LEGACIES  
AND  
ANNUITIES  
TO  
CHARITIES  
AND OTHER  
OBJECTS,  
RESIDUE TO  
BROTHER.

I, A. B., of, &c., hereby revoke all former wills and testamentary dispositions, and declare this to be my last will.

1. I APPOINT C. D., of, &c., and E. F., of, &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will, and I declare that all trusts and powers hereinafter reposed and vested in my trustees may be exercised by the survivor of them or other the trustees or trustee for the time being of this my will.

Appoint-  
ment of  
executors  
and  
trustees.

2. I GIVE the following charitable legacies, free from legacy duty, namely:—To the ——— Infirmary the sum of £——, to the ——— Hospital the sum of £——, to the ——— Society the sum of £—— (state other charitable legacies), AND I DECLARE that the receipt of the respective treasurers of the aforesaid institutions shall be a sufficient discharge for the said legacies respectively; AND I DECLARE that the said charitable legacies shall be paid free from legacy duty, and that the same and the legacy duty thereon respectively, shall be paid exclusively out of such part of my personal estate as may be legally bequeathed for charitable purposes, and in priority to all other payments thereout.

Charitable  
legacies.

3. I GIVE to my brothers (naming them) the sum of £5000 each free from legacy duty.

OF LEGACIES  
AND  
ANNUITIES  
TO  
CHARITIES  
AND OTHER  
OBJECTS,  
RESIDUE TO  
BROTHER.

Legacy to  
trustees  
upon trust  
to invest,  
and pay  
income to  
sister for  
life, and  
after her  
death for  
her children  
and issue  
*per stirpes*.

4. I GIVE the sum of £5000 unto my trustees UPON trust that they shall invest the same with liberty from time to time to vary the investments thereof, and shall stand possessed of the said legacy of £5000, and the investments thereof, UPON the trusts following (that is to say), IN TRUST to pay the income thereof to my sister, G. H., of, &c. (the widow of, &c.), during her life; AND AFTER her decease IN TRUST for — (*names*), the five children of the said G. H. or such of them as shall survive me (*a*), and such child or children (if any) of any one or more of them the said (*five children*) who may die in my lifetime, as being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, except that the children of any deceased child of the said G. H. shall take between them in equal shares the share only which their parent would have taken if he or she had survived me.

Legacy to  
each of  
nephews  
and nieces,  
children of  
a deceased  
sister.

Proviso that  
the children  
of any  
nephew or  
niece dying  
before tes-  
tator, shall  
take  
parent's  
share.

5. I GIVE to each of my nephews and nieces (*names*) (being four of the six children of my deceased sister, I. K.) the sum of £1000; PROVIDED ALWAYS, that if any of them my last-named nephews and nieces shall die in my lifetime leaving issue, the child or children of every or any nephew or niece so dying as aforesaid, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, shall take, and if more than one equally between them, the legacy which his, her, or their parent would have taken if such parent had survived me.

Bequest of  
a legacy  
to trustees,  
upon trust  
to invest

6. I GIVE the sum of £1000 unto my trustees, UPON TRUST that they shall with the consent in writing of my niece L. M., the wife of A. M., of, &c. (another daughter of the said I. K.), and of the said A. M., during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor, at the discretion of my trustees, invest the said sum of £1000, with liberty for my trustees, with such consent or at such discretion as aforesaid, to vary the investments thereof from time to time, and shall stand possessed of the said sum of £1000, and the investments for the time being representing the same, UPON the trusts following (that is to say), IN TRUST to pay the income thereof to the said L. M. during her life for her sole and separate use, and so that she shall not have

and pay  
income to  
married  
niece for  
life, and

(*a*) It is assumed that all the children of G. H. have attained twenty-one.

power during coverture to dispose thereof in the way of anticipation, AND FROM AND AFTER her decease, IN TRUST to pay the said income to the said A. M. if he shall survive her during his life, AND AFTER the decease of the survivor of the said L. M. and A. M., then IN TRUST for such child, children or remoter issue of the said L. M. by the said A. M. in such shares (if more than one) and in such manner as the said L. M. and A. M. by any deed or deeds shall appoint, and in default of such appointment and so far as any such appointment shall not extend, then as the survivor of them by any deed or deeds or by his or her will shall appoint: AND IN DEFAULT of such appointment, and so far as any such appointment shall not extend, IN TRUST for all the children of the said L. M. by the said A. M. who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be but one such child, the whole to be in trust for that one child, BUT so that no child who or any of whose issue shall take any share under any such appointment as aforesaid shall take any share of the unappointed part of the said trust legacy without bringing the share or shares appointed to him or her or to his or her issue into hotchpot, and accounting for the same accordingly, unless the persons or person making such appointment shall thereby direct the contrary.

OF LEGACIES  
AND  
ANNUITIES  
TO  
CHARITIES  
AND OTHER  
OBJECTS,  
RESIDUE TO  
BROTHER.

then to her  
husband  
for life,  
and after  
decease of  
survivor, in  
trust for  
her issue as  
she shall  
appoint;  
and in de-  
fault of  
appoint-  
ment, for  
children  
equally.

Hotchpot  
clause.

7. I GIVE the sum of £1000 unto my trustees, UPON TRUST that they shall invest the same, with liberty to vary the investments thereof from time to time; And shall stand possessed of the last mentioned sum of £1000, and the investments for the time being representing the same (hereinafter in this article called "the said trust legacy"), UPON the trusts following (that is to say), IN TRUST during the life of my nephew N. K. (another son of the said I. K.), to pay and apply the income thereof for the maintenance and support or otherwise for the benefit of all or such one or more of the said N. K. and his wife and issue for the time being (if any), or if he shall for the time being have no wife or issue living, then for the benefit of all or such one or more of the said N. K. and his brothers and sisters, nephews and nieces, for the time being, in such manner in all respects as my trustees shall in their uncontrolled discretion think fit, AND FROM AND AFTER the decease of the said N. K., then IN TRUST for all his children, who being a son or

Another  
legacy to  
trustees  
upon trust  
to invest,

and during  
life of  
nephew, to  
apply  
income for  
the main-  
tenance of  
him and his  
wife and  
children,  
or some of  
them, at  
discretion of  
trustees,

afterwards  
for children.

OF LEGACIES  
AND  
ANNUITIES  
TO  
CHARITIES  
AND OTHER  
OBJECTS,  
RESIDUE TO  
BROTHER.

Power to  
assign life  
interest to  
widow.

Power to  
trustees to  
raise the  
whole or  
any part of  
legacy and  
pay it to  
nephew  
absolutely,  
or (with his  
consent) to  
alter trusts.

Legacy to  
trustees for  
the income  
to be ap-  
plied for the  
benefit of a  
lunatic  
brother,  
and subject  
thereto to  
fall into  
residue.

Authority  
to trustees  
to make an  
allowance  
not exceed-  
ing a certain  
annual  
amount to  
an improvi-  
dent  
brother.

sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, and if there shall be but one such child the whole to be in trust for that one child; AND IF there shall be no child of the said N. K. who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then subject to the foregoing trusts and powers the said trust legacy shall fall into and form part of my residuary estate: PROVIDED ALWAYS, that the said N. K. may by deed or will appoint that the whole or any part of the income of the said trust legacy shall, after his death, be paid to his widow (if any) during her life, or for any less period: PROVIDED ALSO, that notwithstanding the foregoing trusts, my trustees may at any time or times, if they shall in their uncontrolled discretion think fit so to do, raise the whole or any part of the said trust legacy, and pay or transfer the same to the said N. K. for his absolute use, or they may, with the consent of the said N. K., revoke by deed all or any of the trusts hereinbefore declared, and declare any new or other trusts of or concerning the said trust legacy, or any part thereof.

8. I GIVE the sum of £—— to my trustees, IN TRUST that my trustees shall invest the same, with power from time to time to vary the investments thereof, AND shall, during the life of my brother O. P., now residing at —— House under the care of Dr. ——, apply the income of the said trust fund, or a competent part thereof, in or for the maintenance, support, and benefit of the said O. P., with liberty to continue him in the institution where he now resides, or to remove him from thence and place him under the care of some other person or persons and generally to arrange and provide for the comfort of the said O. P. in such manner as they shall in their uncontrolled discretion think fit, And subject to the foregoing trust the said sum of £——, and the trust fund representing the same, and the income thereof not required for the purpose aforesaid, shall sink into and form part of my residuary estate.

9. I EMPOWER my trustees during the life of my brother R. S., if they shall in their discretion think proper, but not otherwise, to make an allowance to the said R. S., or to his wife (if any), of such an amount, and either by quarterly, monthly, or other payments, and generally in such manner as my trustees shall think fit, provided that the amount of such allowance in

any one year shall not exceed £—, and my trustees may either pay the said allowance into the hands of the said R. S., or into the hands of his wife, for her sole and separate use, or may apply the same for his or her benefit in such manner as they shall think fit, And I expressly declare that it shall be in the absolute discretion of my trustees whether they will make any such allowance or not, and they may at any time discontinue or suspend the same, either wholly or partially, without assigning any reason for so doing, And I also empower my trustees to set apart, and appropriate and invest in their names a sufficient part of my estate to provide such allowance as aforesaid, AND I declare that subject to the said allowance, the fund so set apart, and the income thereof not required for the purpose aforesaid, shall sink into and form part of my residuary estate.

OF LEGACIES  
AND  
ANNUITIES  
TO  
CHARITIES  
AND OTHER  
OBJECTS,  
RESIDUE TO  
BROTHER.

with dis-  
cretionary  
powers to  
discontin-  
ue or suspend  
same.

10. I GIVE the following legacies free from legacy duty, namely, to, &c. (*state particulars of legacies to various friends*): AND TO EACH of my servants who shall be living with me at my decease a sum equal to one year's wages in addition to the wages then due to him or her.

Legacies to  
servants.

11. I GIVE the following annuities (free from legacy duty), namely, an annuity of £— to — during her life: AND an annuity of £— to — and — his wife and the survivor of them for their lives and the life of the survivor of them; AND I DIRECT that the said several annuities shall be paid quarterly the first quarterly payment to be made at the expiration of three calendar months after my decease: AND I DIRECT my trustees to appropriate and set apart and invest such a sum of money as will when invested produce by the income thereof an annual sum equal to the amount of the annuities or annuity for the time being payable under this my will, and to apply the income or (if necessary) the surplus of the fund so appropriated in payment of the said annuities or annuity, which fund shall on the dropping of the respective annuities fall into and form part of my residuary estate; and as each annuity ceases, I authorise my trustees to transfer to the residuary legatee a corresponding part of the said appropriated fund, retaining only such part thereof as at the time of such transfer will be sufficient to produce by the income thereof an annual sum equal to the then subsisting annuity or annuities.

Gift of  
annuities.

13. I GIVE all my real and personal estate, not hereby otherwise disposed of (except estates vested in me as a trustee or

Devise and  
bequest of  
residue to  
brother.

OF LEGACIES  
AND  
ANNUITIES  
TO  
CHARITIES  
AND OTHER  
OBJECTS,  
RESIDUE TO  
BROTHER.

mortgagee), subject to the payment of my funeral and testamentary expenses and debts, and the legacies and annuities bequeathed by this my will or any codicil hereto, unto my brother P. B. absolutely (*Investment clause; Provision as to appointment of new trustees; and Devise of trust and mortgage estates, supra, pp. 451 to 453*).

IN WITNESS, &c.

### No. XIII.

OF A PART-  
NER, WITH  
DIRECTIONS  
AS TO  
WINDING UP  
BUSINESS.

WILL of a person carrying on a TRADE in PARTNERSHIP with other persons, containing DIRECTIONS as to WINDING UP the BUSINESS.

Devise and bequest of residue of real and personal estate to trustees for sale and conversion.

Power to trustees to wind up share of testator in partnership business.

I, A. B., of, &c. (*commencement of will and appointment of executors and trustees, and guardians, supra, p. 448*) (*Bequest of legacies*): I GIVE, DEVISE, AND BEQUEATH all my real and personal estate not hereby otherwise disposed of unto my trustees, UPON TRUST that my trustees shall (subject to the directions hereinafter contained with respect to my partnership business) sell, &c. (*Trusts for sale and conversion: Trusts of proceeds as in Precedent No. III., supra, pp. 449, 450*); AND with respect to my share and interest in the business of —, now carried on by me at — in partnership with — (*names*), under the firm of — and Co., I empower my trustees to adjust and settle all accounts and transactions relating to the said partnership business, and to wind up the affairs and concerns thereof, and ascertain the amount of my share and interest therein, either according to the provisions of the articles of partnership under which the said business shall be carried on at my decease, or upon such other terms and in such other manner as may be agreed on between them and my surviving partners or partner, with power for my trustees to refer to arbitration, or otherwise to compromise or settle any question that may arise in or about the winding up of the said concern, in such manner as they may think fit, and generally to do and execute all such acts and things in relation to the premises as may appear to them necessary or expedient, without being answerable for any loss which may arise thereby: AND I AUTHORISE my trustees, if they shall in their discretion think fit, to permit the whole or any part of the amount which on taking the accounts of the said

Power to trustees to permit testator's share of capital to

partnership shall appear to be due to my estate, as and for my share and interest in the said business, to remain in the said business as a loan for any period not exceeding seven years from my decease, but so that the repayment thereof, with interest after the rate of £5 per cent. per annum, shall be secured by the joint and several bond of the persons or person for the time being continuing to carry on the said business either with or without any other security for the same, as my trustees shall think fit: AND (subject to the provisions hereinbefore contained as to the said business) I empower my trustees to postpone the sale and conversion of my real and personal estate for so long as they shall think fit: AND I DIRECT that the net rents and income of my real and personal estate, which shall for the time being remain unsold and unconverted (including the interest of any capital left in the said business as aforesaid), shall be paid, &c. (*Direction as to income of unconverted property: Clauses as to investments and appointment of new trustees; Devise of trust and mortgage estates, supra, pp. 451 to 453*).

OF A PARTNER, WITH DIRECTIONS AS TO WINDING UP BUSINESS.

remain in business for seven years.

Power to trustees to postpone sale and conversion.

IN WITNESS, &c.

#### No. XIV.

WILL of a TRADER; BEQUEST to WIFE of use of FURNITURE, &c., during WIDOWHOOD; DEVISE and BEQUEST of REAL and PERSONAL estate to trustees; DIRECTION to carry on BUSINESS until YOUNGEST SON of Testator attains TWENTY-ONE, and during the same period to pay ANNUAL SUM to Testator's WIFE, determinable on her SECOND MARRIAGE; When youngest Son attains twenty-one, BUSINESS to be offered for SALE to SONS in SUCCESSION, and LEASE of BUSINESS PREMISES to be made to purchaser; ANNUAL SUM to be paid to WIFE, and subject thereto, SURPLUS to go to all the CHILDREN equally; Usual provisions.

OF TRADER, WITH DIRECTIONS TO CARRY ON BUSINESS.

I, A. B., of, &c. (*commencement and appointment of executors and trustees and guardians, supra, p. 448*): I GIVE to my wife — (name) during her life, if she shall so long remain my widow, the use and enjoyment of all my books, pictures, prints, plate, linen, china, household furniture, and household effects; AND I DIRECT that after her decease or second marriage (which shall

Bequest to wife to use of books, &c., during widowhood.



OF TRADER,  
WITH  
DIRECTIONS  
TO CARRY ON  
BUSINESS.

Bequest of  
residue to  
trustees.

Upon trust  
to carry on  
business  
until  
youngest  
son attains  
twenty-one.

And subject  
thereto, to  
sell and  
convert.  
Trusts of  
proceeds.

Until  
youngest  
son attains  
twenty-one,  
an annual  
sum to be  
paid to wife  
during  
widowhood  
for main-  
tenance  
of infant  
children.

first happen) the same shall fall into the residue of my personal estate (*Bequest of legacies*): I GIVE all the residue of my estate and effects, both real and personal (except estates vested in me upon any trusts or by way of mortgage), unto my trustees, upon the trusts and with and subject to the powers and provisions hereinafter declared concerning the same (that is to say), UPON TRUST that my trustees shall continue to carry on the business of —, now carried on by me at —, until the youngest for the time being of my four sons — namely (*names of four sons*) shall attain the age of twenty-one years, with liberty for my trustees to use and employ in the said business such part of my residuary estate, or the proceeds thereof, as they may think fit, and with liberty for that purpose to resort to any accumulations of income or profits which may have arisen under the direction to accumulate hereinafter contained, and with liberty also for my trustees to employ any or either of my said sons or any other person or persons to be the manager or managers of the said business, and also to employ such assistants and servants in the said business, and to pay and allow to such manager or managers, assistants and servants such salaries and wages, and generally to conduct and carry on the said business in such manner as my trustees shall in their discretion think fit: AND SUBJECT to the direction hereinbefore contained in relation to the carrying on of the said business, I direct that my trustees shall sell and convert into money my real estate and residuary personal estate, or such part thereof as shall not consist of money, and shall out of the moneys to arise from such sale and conversion, and out of my ready money, pay my funeral and testamentary expenses, and debts, and the legacies hereby bequeathed, and shall invest the residue of the said moneys, &c. (*Trust for investment and varying investments, supra*, p. 449): AND I FURTHER DECLARE that until the youngest for the time being of my said four sons shall attain the age of twenty-one years, my trustees shall out of the income of my residuary estate, or the investments for the time being representing the same (including as part of such income the profits arising from the said business), in the first place pay to my said wife so long as she shall remain my widow, for her own use, the annual sum of £—, she thereout maintaining and educating such of my children as shall for the time being be under the age of twenty-one

years, and if my said wife shall die or marry again before all my children shall have attained the age of twenty-one years, then my trustees shall, out of the said income, pay and apply such annual sum as they may think fit for or towards the maintenance and education of such of my children as shall for the time being be under the age of twenty-one years, and shall accumulate the surplus of the said income in the way of compound interest, by investing the same and all the resulting income thereof: AND I FURTHER DECLARE, that when and so soon as the youngest for the time being of my said four sons shall have attained the age of twenty-one years, my trustees shall offer the said business for sale to any one of my sons who may then be manager of the said business, and if he shall refuse the offer, or if neither of my sons shall then be the manager of the said business, my trustees shall offer the said business for sale to my sons then living (other than any son who may have previously refused as aforesaid) in order one after the other according to seniority of age, and if all my sons shall decline such offer, my trustees shall sell the said business to any person or persons and in such manner as they may think fit: AND I DECLARE that each of my sons to whom an offer of sale shall be made as aforesaid shall be allowed ten days within which he must either accept or decline such offer, and if he shall not accept the same within such ten days he shall be deemed to have declined it: AND I FURTHER DECLARE that if either of my sons shall accept the said offer, the price to be paid for the said business shall be ascertained by the valuation of two indifferent persons, one to be named by my trustees and the other by the purchaser, or in case of their disagreement, by an umpire to be chosen by such two valuers, and if either party shall fail to name a valuer, or to notify it in writing to the other party for the space of ten days after the day on which the offer shall be accepted, or if the valuer named by either party shall refuse or neglect to act, then the valuation shall be made by the valuer of the other party alone: PROVIDED ALWAYS that no purchaser under this my will shall be obliged or concerned to see or inquire whether the business has been duly offered for sale to my sons as hereby directed, nor whether any such offer shall have been accepted or declined, nor shall the title of such purchaser be afterwards impeached on the ground that

OF TRADER,  
WITH  
DIRECTIONS  
TO CARRY ON  
BUSINESS.

Surplus  
income to  
be accumu-  
lated.

When  
youngest  
son attains  
twenty-one,  
business to  
be offered  
for sale to  
such son as  
shall be  
manager;  
if no such  
son, or if  
he refuses,  
then to all  
the sons in  
order ac-  
cording to  
seniority;  
and if all  
the sons  
decline,  
then to be  
sold to any  
other  
person.

Offer to be  
accepted  
within  
given time.

Price to be  
fixed by  
valuation.

Provide that  
no pur-  
chaser shall  
be bound to  
inquire  
whether  
offer has  
been made,  
&c.

OF TRADER,  
WITH  
DIRECTIONS  
TO CARRY ON  
BUSINESS.

Lease to be  
granted of  
business  
premises to  
purchaser of  
business.

If son pur-  
chases one-  
third of  
purchase-  
money to be  
paid down,  
and remain-  
ing two-  
thirds may  
remain on  
security of  
his share in  
residue.

Trusts of  
residue  
after  
youngest  
child has  
attained  
twenty-one.

To pay  
annual sum  
to wife  
during  
widowhood.

And subject  
thereto  
for all the  
testator's  
children  
equally.

the said business had not previously been duly offered for sale as aforesaid, or that any such offer (if made) had not been duly declined: AND I FURTHER DECLARE that if either of my said sons shall purchase the business as aforesaid, my trustees shall grant to him a lease of the premises at which the business is carried on, consisting of — (*describing it*), and of all the plant and machinery in and about the same for any term not exceeding fourteen years in possession from the granting of such lease, at a rent the amount whereof shall be determined by valuation in the same manner as is hereinbefore directed with regard to the purchase-money of the business, And the said lease shall contain covenants by the lessee for keeping in repair the said premises and the plant and machinery therein, for substituting plant and machinery of equal value in the place of any that may be removed by the lessee during the term, and for delivering up the said premises, plant, and machinery at the end of the term in as good repair and condition as at the commencement of such term, and such other covenants and conditions as are usual in leases of the like nature: AND I FURTHER DECLARE that if either of my sons shall purchase the business as aforesaid, he shall pay one-third at least of the purchase-money at the time of completing the purchase, but the remaining two-thirds, or any less proportion of the purchase-money, may remain a debt from him to my estate for any period not exceeding five years from the time of completion, and shall be secured in the meantime, with interest thereon, after the rate of £4 per cent. per annum by a mortgage of all the interest of the purchaser under this my will in my residuary estate or the proceeds thereof: AND I FURTHER DECLARE that when and so soon as the youngest for the time being of my said four sons shall have attained the age of twenty-one years, my trustees shall stand possessed of my residuary estate (including the proceeds of the aforesaid business), IN TRUST to pay out of the income thereof the annual sum of £100 to my said wife during her life, if she shall so long remain my widow, by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months after the time hereby appointed for the commencement of the same, and subject to the said annual sum, IN TRUST for all my children who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall

attain that age or marry, in equal shares, and if there shall be only one such child, the whole to go to that one child: AND I EMPOWER my trustees, at their discretion, to raise any part not exceeding one moiety of the presumptive share for the time being of any infant child of me in my residuary estate, and to apply the same for his or her preferment, advancement, or benefit as my trustees shall think fit: I ALSO empower my trustees to postpone the sale and conversion of my real and personal estate, or any part thereof, for so long as they shall think fit, and in the meantime to let or demise any real estate, including chattels real, for any term of years not exceeding twenty-one years, to take effect in possession at such rent and subject to such covenants and conditions as my trustees shall think fit, but without prejudice to the directions hereinbefore contained as to granting a lease of the said business premises to any son of mine who may purchase the said business; AND I DECLARE that any moneys, &c. (*Investment clause; Clause as to appointment of new trustees; Devise of trust and mortgage estates, supra, pp. 451 to 453*).

OF TRADER,  
WITH  
DIRECTIONS  
TO CARRY ON  
BUSINESS.

Advance-  
ment  
clause.

Power to  
postpone  
sale and  
conversion.

IN WITNESS, &c.

#### No. XV.

WILL of REAL and PERSONAL PROPERTY; DEVISE of FREEHOLDS in parish of —, to secure Rent-Charge to Wife, and subject thereto to SONS successively in TAIL, with remainder to DAUGHTERS as tenants in COMMON in TAIL, with CROSS REMAINDERS; POWER to TRUSTEES to apply rents and profits for MAINTENANCE during minorities; POWER of LEASING; POWER of SALE and EXCHANGE by reference to LORD CRANWORTH'S ACT; BEQUEST of LEASEHOLD in same County upon Trust similar to Freeholds; DEVISE and BEQUEST of Residue of Real and Personal Estate to Trustees upon Trust for Sale and Conversion; TRUSTS of RESIDUARY MONEYS for all the Testator's Children with usual Provisions.

DEVISE OF  
REAL ESTATE  
TO SONS SUC-  
CESSIVELY  
IN TAIL, &c.,  
SUBJECT TO  
RENT-  
CHARGE TO  
WIFE AND  
BEQUEST OF  
PERSONALTY  
IN FAVOUR  
OF  
CHILDREN.

I, A. B., of, &c. (commencement and appointment of executors and trustees; declaration that powers, &c., of trustees may be exercised by survivors, &c.; appointment of guardians, see

DEVISE OF  
REAL ESTATE  
TO SONS SUC-  
CESSIVELY  
IN TAIL, &c.,  
SUBJECT TO  
RENT-  
CHARGE TO  
WIFE AND  
BEQUEST OF  
PERSONALTY  
IN FAVOUR  
OF  
CHILDREN.

Devise of  
freeholds to  
secure rent-  
charge to  
wife.

Powers of  
distress and  
entry.

Remainder  
to sons suc-  
cessively in  
tail, remain-  
der to  
daughters  
as tenants  
in common  
in tail.

Direction to  
trustees to  
receive  
rents, &c.,  
during  
minority of  
tenant in  
tail in pos-  
session,  
and apply

*supra*, pp. 448, 449): I DEVISE all my freehold messuages, tenements, lands, and hereditaments, situate in the parish of —, in the county of —, to the following uses (that is to say): TO THE USE and intent that my wife C. B. may receive thereout during her life a yearly rent-charge of £—, to be paid by equal quarterly payments, the first of such payments to be made at the expiration of three calendar months after my decease: AND TO THE FURTHER USE AND INTENT that if the said rent-charge, or any part thereof, shall be in arrear and unpaid for twenty-one days next after either of the said days appointed for payment thereof, then and in such case, and so often as the same shall happen, my said wife shall have the same remedy by distress upon the said hereditaments and premises, or any of them, for recovering such rent-charge, and also all costs and expenses occasioned by reason of the non-payment thereof, as lessors have by law for the recovery of rent in arrear; and that in case the said rent-charge, or any part thereof, shall be in arrear and unpaid for forty days next after either of the said days appointed for payment thereof, she may enter into and upon the said hereditaments and premises, or any part thereof, and receive the rents thereof until all arrears of the said rent-charge, with the payments to accrue during such possession, and all costs and expenses occasioned by the non-payment of the said rent-charge, shall be satisfied; and subject to the said rent-charge and the said remedies for enforcing the payment thereof, TO THE USE of my first and other sons successively in tail, so that every elder son and his issue shall be always preferred to every younger son and his issue; and for default of such issue, TO THE USE of all my daughters in equal shares as tenants in common in tail, AND IN CASE of the failure of issue of any such daughter or daughters, then as to as well the original share as every accruing share of every or any daughter whose issue shall so fail, TO THE USE of the others and other of my daughters in tail in equal shares as tenants in common if more than one, AND IF there shall be only one such daughter then TO THE USE of such only daughter in tail, with remainder TO THE USE of my own right heirs for ever: AND I DECLARE that during the minority of any son or unmarried daughter of mine who shall for the time being be entitled to the hereditaments hereinbefore devised, or any undivided share thereof, as tenant in tail in possession under this my will, my trustees shall enter into the

possession of and receive the rents and profits of the said hereditaments, or the undivided share thereof belonging to such minor, and manage the same, and shall with and out of the said rents and profits, and the moneys to arise from the sale of any timber or other trees on the premises, pay, in the first place, the expenses attending the management thereof, and all other outgoings affecting the same, and shall in the next place apply such sum or sums of money as they may think fit, for the maintenance and education, or otherwise for the benefit of such minor, with liberty for my trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: AND SHALL accumulate the surplus of such rents and profits at compound interest by investing the same, and the resulting income thereof, in the names of my trustees in some or one of the modes of investment hereinafter authorised, with liberty from time to time to vary the said investments into or for others of the same or a like nature, and shall stand possessed of such accumulations, IN TRUST for the person during whose minority the same shall have arisen, in case such person being a male shall attain the age of twenty-one years, or being a female shall attain that age or marry, but in case such person being a male shall die under the age of twenty-one years, or being a female shall die under that age without having been married, upon such trusts as the same would be held upon if the same were moneys arising from any sale under the power of sale hereinafter contained: AND I FURTHER DECLARE, that during the period or respective periods during which my trustees shall under the aforesaid provision have the management of the said hereditaments my trustees shall have ample powers to appoint and remove stewards, agents, gamekeepers, and servants, to direct repairs, alterations, and improvements, to reduce rents, accept surrenders of leases and tenancies, to make allowances to tenants and others, and to do or cause to be done all such acts and things relating to the management of the said premises as my trustees shall in their discretion think fit: AND I DECLARE that it shall be lawful for my trustees during the minority of any son or daughter of mine entitled for the time being to the hereditaments hereinbefore devised, or any undivided share thereof, as tenant in tail in possession, under the limitations of this my will, to appoint by way of lease the said hereditaments, or any part thereof, to any

DEVISE OF  
REAL ESTATE  
TO SONS SUC-  
CESSIVELY  
IN TAIL, &c.,  
SUBJECT TO  
RENT-  
CHARGE TO  
WIFE AND  
BEQUEST OF  
PERSONALTY  
IN FAVOUR  
OF  
CHILDREN.

same for  
main-  
tenance

and accu-  
mulate  
surplus.

Powers of  
manage-  
ment.

Power of  
leasing.

DEVISE OF  
REAL ESTATE  
TO SONS SUC-  
CESSIVELY  
IN TAIL, &c.,  
SUBJECT TO  
RENT-  
CHARGE TO  
WIFE AND  
BEQUEST OF  
PERSONALTY  
IN FAVOUR  
OF  
CHILDREN.

Power of  
sale and  
exchange.

Powers of  
leasing, &c.,  
not to be  
exercised  
without  
consent of  
adult  
daughters.

Bequest of  
leaseholds  
upon trust  
to pay  
rents, &c.,  
and subject  
thereto  
upon trusts  
correspond-  
ing with  
trusts of  
freeholds.

person or persons for any term of years not exceeding twenty-one years, to take effect in possession, so that there be reserved upon every such lease the best rent to be incident to the immediate reversion that can be reasonably obtained for the same, without taking anything in the nature of a fine or premium for the making thereof, and so that there be therein contained a power of re-entry for non-payment of the rent thereby reserved for any space not exceeding thirty days, and so that the lessee do execute a counterpart thereof and do thereby covenant for the payment of the rent thereby reserved, and be not made dispunishable for waste (a): AND I DECLARE that my trustees shall have a power of sale and exchange exercisable over the hereditaments hereinbefore devised at any time during the minority of any son or daughter of mine for the time being entitled to the said hereditaments, or any undivided share thereof, as tenant in tail in possession under this my will (b): PROVIDED ALWAYS, and I declare that the powers of leasing, and of sale and exchange hereinbefore contained shall not be exercisable during the minority of any daughter of mine entitled for the time being in possession to an undivided share of the said hereditaments under this my will, if the daughter or any of the daughters entitled for the time being in possession to the other undivided share or shares of the same hereditaments shall then be living and of full age without the written consent of such last-mentioned daughter or daughters, and the consent of any married daughter shall be effective notwithstanding her coverture: I GIVE AND BEQUEATH all my leasehold messuages, lands, tenements, and hereditaments, situate in the parish of —, in the county of —, unto my trustees, for all the estate, term, and interest which I shall at my decease have therein respectively, Upon trust out of the rents and profits of the said premises to pay the rents and observe and perform the covenants by and in the several leases thereof reserved and contained, and on the part of the lessees to be paid, observed, and performed, and subject thereto, UPON SUCH TRUSTS, and with and subject to such powers and provisions as will correspond as nearly as the different tenures will permit with the uses, trusts, powers and provisions hereinbefore declared and contained con-

(a) For powers of granting building and mining leases, see *supra*, pp. 310, 311.

(b) For a full power of sale and exchange, see next Precedent.

cerning the said freehold hereditaments situate in the same parish, but so as not to multiply charges, and so also that the said leasehold premises shall not vest absolutely in any person hereby made tenant in tail by purchase of the said freehold hereditaments, unless such person shall attain the age of twenty-one years, but on the death of such person under that age shall go and devolve as if the same were freehold of inheritance included in the devise of hereditaments of that tenure hereinbefore contained : AND AS TO ALL THE REST and residue of my real and personal estate (except estates vested in me upon any trusts or by way of mortgage), I give, devise, and bequeath the same unto my trustees UPON trust, to sell, call in, and convert into money the same, or such part thereof as shall not consist of money, and with and out of the moneys to arise from such sale, calling in, and conversion into money, and out of the money of which I shall be possessed at my death, to pay my funeral and testamentary expenses and debts (other than mortgage debts affecting the said freehold and leasehold hereditaments, situate in the parish of — aforesaid, hereinbefore devised and bequeathed respectively), and the legacies bequeathed by this my will, or by any codicil hereto, and to invest the residue of the said moneys in, &c. (*Trust for investments and varying investments, supra*, p. 449) : AND I DECLARE that my trustees shall stand possessed of the said residuary moneys, and the investments for the time being representing the same (hereinafter called the residuary trust funds) : IN TRUST, &c. (*for children equally, with usual provisions ; Investment clause ; Clause as to appointment of new trustees ; Devise of trust and mortgage estates, supra*, pp. 451 to 453).

IN WITNESS, &c.

DEVISE OF  
REAL ESTATE  
TO SONS SUC-  
CESSIVELY  
IN TAIL, &c.,  
SUBJECT TO  
RENT-  
CHARGE TO  
WIFE AND  
REQUEST OF  
PERSONALTY  
IN FAVOUR  
OF  
CHILDREN.

Devise and  
bequest of  
residuary  
real and  
personal  
estate to  
trustees  
upon trust  
for sale and  
conversion.  
Trusts of  
residuary  
moneys.



DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

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## No. XVI.

WILL of REAL and PERSONAL *Estate*; BEQUEST of LEASEHOLD DWELLING-HOUSE and HOUSEHOLD EFFECTS to WIFE; DEVISE of FREEHOLDS to use of Trustees for term of FIVE HUNDRED YEARS, with remainder to use that WIFE may take a RENT-CHARGE, and subject thereto to uses in favour of SONS and DAUGHTERS successively in strict settlement, with an ultimate remainder to Testator's RIGHT HEIRS; TRUSTS of TERM of FIVE HUNDRED YEARS, to pay DEBTS, &c., in aid of personalty, then to secure Wife's RENT-CHARGE, and then to raise PORTIONS for Testator's YOUNGER CHILDREN; POWER to TRUSTEES to MANAGE property during MINORITIES; NAME and ARMS CLAUSE; POWER to each MALE TENANT FOR LIFE to JOINTURE wife, and to each FEMALE TENANT for LIFE to appoint RENT-CHARGE to HUSBAND; POWER to each TENANT FOR LIFE to charge with portions for YOUNGER CHILDREN; POWERS to LEASE, to PARTITION, to ENFRANCHISE *Copyholds*, to SELL and EXCHANGE; DEVISE and BEQUEST of COPYHOLDS and LEASEHOLDS to trustees upon trusts to CORRESPOND with uses of FREEHOLDS; BEQUEST of JEWELS, &c., as HEIR-LOOMS; BEQUEST of LEGACIES; BEQUEST of RESIDUE of Personalty to Trustees in Trust to purchase LANDS to be settled to uses declared by will of Real Estate; POWER to APPOINT new TRUSTEES; DEVISE of TRUST and MORTGAGED *Estates* and APPOINTMENT of EXECUTORS.

I, A. B., of, &c. (*commencement of will, supra*, p. 448).

1. Appointment of executors and trustees and guardians.

1. I APPOINT C. D., of, &c., E. F., of, &c., and G. H., of &c. (hereinafter called "my trustees"), to be the executors and trustees of this my will: AND I declare that all trusts and powers hereinafter reposed and vested in my trustees may be exercised by the survivors or survivor of them, or the executors or administrators of such survivor, or other the trustees or trustee for the time being of this my will: AND I appoint my dear wife —

during her life, and after her death my trustees and the survivors and survivor of them, to be the guardian and guardians of my infant children.

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

2. I GIVE AND BEQUEATH my leasehold messuage or dwelling-house, situate and being No. — in —, in which I am now residing, and the appurtenances, for all my term, estate, and interest therein, and all my books, plate, linen, china, household goods, furniture, and effects, which shall be in or about the said messuage or dwelling-house at the time of my decease, unto my dear wife — absolutely.

2. Bequest  
of leasehold  
dwelling-  
house and  
household  
effects.

3. I GIVE AND DEVISE my capital messuage, or mansion-house called —, and all my manors, messuages, lands, tenements, and hereditaments, situate in the county of —, or elsewhere in England or Wales, and being freehold of inheritance, To THE USES following (that is to say): To THE USE of my trustees, their executors, administrators, and assigns, for the term of five hundred years, to be computed from the day of my decease, upon the trusts hereinafter declared concerning the same: AND FROM AND AFTER the determination of the said term, and in the meantime subject thereto, and to the trusts thereof to the use that my wife, &c. (*shall receive a jointure, with usual powers for enforcing payment thereof, see supra, p. 486*); and subject as aforesaid, To THE USE of my eldest son M. B., and his assigns, during his life, without impeachment of waste, and after his decease, To THE USE of his first and other sons successively according to seniority in tail male, the elder of such sons and his issue male being always preferred to and to take before the younger of such sons and his or their issue male, with remainder To THE USE of my second son N. B., and his assigns, during his life, without impeachment of waste, and after his decease To THE USE of his first and other sons successively according to seniority in tail male, the elder of such sons and his issue male being always preferred to and to take before the younger of such sons and his or their issue male, with remainder To THE USE of my sons hereafter to be born, and their issue male in succession, so that the elder of my after-born sons and his issue male shall be always preferred to and take before the younger of my after-born sons and his or their issue male, and so also that each after-born son of mine shall take an estate for his life without impeachment of waste, with remainder after his decease To THE USE of his first and other sons successively

. Devise of  
real estate.

To trustees  
for five  
hundred  
years.

Subject to  
term, that  
wife may  
take rent-  
charge.

Subject  
thereto to  
eldest son  
for life, re-  
mainder to  
his sons suc-  
cessively in  
tail male,

remainder  
to second  
son and his  
first and  
other sons  
*similiter*,

remainder  
to after-born  
sons and  
their first  
and other  
sons  
*similiter*,

DEVISE OF  
REAL ESTATE  
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SETTLEMENT.

remainder  
to eldest  
daughter  
and her first  
and other  
sons  
*similiter*,

remainder  
to second  
daughter  
and her first  
and other  
sons  
*similiter*,

remainder  
to after-born  
daughters  
and their  
first and  
other sons  
*similiter*,

remainder  
to first and  
other sons  
of eldest son  
successively  
in tail  
general,

remainder  
to first and  
other  
daughters  
in tail  
general,

remainder  
to sons and  
daughters of  
second and  
after-born  
sons  
*similiter*,

according to seniority in tail male, the elder son of each after-born son of mine, and his issue male, being always preferred to and to take before the younger son or sons of the same after-born son of mine and his or their issue male, with remainder To THE USE of my daughter O. B., and her assigns during her life, without impeachment of waste, with remainder To THE USE of the first and other sons of the said O. B. successively according to seniority in tail male, the elder of such sons and his issue male being always preferred to and to take before the younger of such sons and his or their issue male, with remainder To THE USE of my second daughter P. B., and her assigns, during her life, without impeachment of waste, with remainder To THE USE of the first and other sons of the said P. B. successively according to seniority in tail male, the elder, &c. (*as before*), with remainder To THE USE of my daughters hereafter to be born, and their issue male in succession, so that the elder of my after-born daughters and her issue male shall be always preferred to and take before the younger of my after-born daughters and her or their issue male, and so also that every after-born daughter of mine shall take an estate for her life, without impeachment of waste, with remainder to her first and other sons successively according to seniority in tail male, the elder son of each after-born daughter of mine and his issue male being always preferred to and to take before the younger son or sons of the same after-born daughter of mine and his or their issue male, with remainder To THE USE of the first and other sons of the said M. B. successively according to seniority in tail general, the elder of such sons and his issue being always preferred to and to take before the younger of such sons and his or their issue, with remainder To THE USE of the first and other daughters of the said M. B. successively according to seniority in tail general, the elder of such daughters and her issue being always preferred to and to take before the younger of such daughters and her or their issue, with remainder, &c. (*Similar remainders to the first and other sons of N. B. successively in tail general, then to the first and other daughters of N. B. successively in tail general*), with remainder To THE USE of the sons in succession of every son of mine hereafter to be born and their issue, so that the sons of every elder of my after-born sons and their issue shall be always preferred to and take before the sons of every younger of my after-born sons and their issue, and so

also that the sons of each after-born son of mine shall take successively according to seniority in tail general, the elder son of each after-born son of mine and his issue being always preferred to and to take before the younger son or sons of the same after-born son of mine and his issue, with remainder DEVISE OF REAL ESTATE IN STRICT SETTLEMENT. TO THE USE of the daughters in succession of every after-born son of mine and their issue, so that the daughters of every elder of my after-born sons and their issue shall be always preferred to and to take before the daughters of every younger of my after-born sons and their issue, and so also that the daughters of each after-born son of mine shall take successively according to seniority in tail general, the elder daughter of each after-born son of mine and her issue being always preferred to and to take before the younger daughter or daughters of the same after-born son of mine and her issue, with remainder TO THE USE of, &c. (*First and other sons of O. B. successively in tail general, then to first and other daughters of O. B. successively in tail general, then to first and other sons and first and other daughters of P. B. successively in tail general, then to first and other sons and first and other daughters of after-born daughters of testator successively in tail general*), with remainder TO THE USE of my brother Q. B., and his assigns, during his life, without impeachment of waste, with remainder, &c. (*Remainder to sons and daughters of Q. B., in strict settlement, similar to those to sons and daughters of testator*), with remainder TO THE USE of my own right heirs for ever.

remainder to testator's brother for life, remainder over.

4. THE said hereditaments are hereinbefore limited to my trustees for the said term of five hundred years, upon the following trusts (that is to say): UPON TRUST that my trustees shall in the first place, by mortgage of the premises comprised in the said term, or any part thereof, for all or any part of the said term, or by any other reasonable ways and means, raise in aid of my personal estate (if insufficient) such sum or sums of money as may be required to satisfy my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will or any codicil hereto, AND UPON FURTHER TRUST that if the said yearly rent-charge of £— hereinbefore limited to my said wife, shall at any time or times be in arrear and unpaid for the space of sixty days next after any of the days hereby appointed for payment thereof, then and so often as the same

4. Trusts of term of five hundred years.

To raise money to pay debts, &c., in aid of personal estate.

To better secure rent-charge to wife.

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

To raise  
portions for  
younger  
children of  
testator,

and to raise  
annual sum  
for mainte-  
nance of  
children  
entitled in  
expectancy,

and to raise  
costs and  
expenses.

shall happen my trustees shall, with and out of the rents and profits of the said hereditaments or by mortgage thereof, for all or any part of the said term, or by any other reasonable ways or means, raise and pay to my wife the said rent-charge and all arrears thereof, and also raise and pay all costs, charges, and expenses which my said wife or my trustees shall sustain by reason of the non-payment of the said rent-charge, AND (subject to the trusts aforesaid), UPON FURTHER TRUST that my trustees shall, by mortgage, sale, or other disposition of the said hereditaments or any part thereof, for all or any part of the said term, or by any other reasonable ways and means raise the sum of £—— for each and every of my children living at my decease who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry (other than and not being a son or daughter entitled for the time being to the said hereditaments under the limitations hereinbefore contained as tenant for life in possession), with power for my trustees at any time or times during the minority of any son of mine (not being a son entitled for the time being as aforesaid) to raise any sum or sums of money not exceeding together the sum of £——, and apply the same for the preferment, advancement, or benefit of such son as my trustees shall think fit, and in part satisfaction of his portion under the trust last hereinbefore declared; AND ALSO shall from and after my decease raise out of the rents and profits of the said hereditaments, and apply for the maintenance and education of each or any child for the time being entitled in expectancy to a portion under the trusts aforesaid, such annual sum as my trustees shall think fit, not exceeding in any one year, for each such child, what the interest of his or her expectant portion would amount to after the rate of £4 per cent. per annum, with liberty for my trustees to pay the same to the guardian or any of the guardians of such child for the purpose aforesaid, without being liable to see to the application thereof: AND UPON FURTHER TRUST that my trustees shall raise by some or one of the ways and means aforesaid such sum or sums of money as shall be required for the payment of the costs and expenses attending the execution of the trusts hereinbefore declared concerning the said term of five hundred years, and shall apply the moneys to be so raised as last aforesaid, in payment of the said costs and expenses accordingly: AND UPON FURTHER TRUST that my

trustees shall permit the rents and profits of the said hereditaments, or so much thereof as shall remain after answering the trusts and purposes aforesaid, to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the said term.

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

Ultimate  
trust for  
person  
entitled in  
remainder.

5. DURING the minority of any person for the time being entitled under this my will to the hereditaments hereinbefore devised as tenant for life or tenant in tail in possession by purchase, my trustees shall enter into and retain possession of, and receive the rents and profits of the said hereditaments and manage the same, and shall, with and out of the said rents and profits and the moneys to arise from the sale of any timber or other trees standing on the said hereditaments, pay in the first place the expenses attending the management of the said hereditaments and all other outgoings affecting the same, and shall in the next place apply such sum or sums of money as they may think fit for the maintenance and education or otherwise for the benefit of such minor, with liberty for my trustees to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof, AND SHALL accumulate the surplus of such rents and profits at compound interest by investing the same and the resulting income thereof in some or one of the modes of investment hereinafter authorized, with power to vary the said investments from time to time into or for others of the same or a like nature, and shall stand possessed of such accumulations, IN TRUST for the person during whose minority the same shall have arisen if such person being a male shall attain the age of twenty-one years, or being a female shall attain that age or marry, But if such person being a male shall die under the age of twenty-one years, or being a female shall die under that age and unmarried, then upon such trusts as the same would be held upon if the same were moneys arising from a sale of the said hereditaments under the power of sale hereinafter contained, AND during the period or respective periods for which my trustees shall have the management of the hereditaments they shall have ample powers to appoint and remove stewards, agents, gamekeepers and servants, to direct repairs, alterations, and improvements, to reduce rents, accept surrenders of leases and tenancies, to make allowances to tenants and others, and to do or cause to be done all such acts and things

5. Trustees  
to manage  
and receive  
rents during  
minorities  
of tenants  
for life or  
in tail;

and to accu-  
mulate  
surplus  
rents.

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REAL ESTATE  
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SETTLEMENT.

6. Name  
and arms  
clause.

relating to the management of the hereditaments as my trustees shall think fit.

6. EVERY person who shall become entitled under this my will to the hereditaments hereinbefore devised as tenant for life or tenant in tail in possession, and who shall not then bear the surname and arms of B., shall within twelve calendar months after he or she shall have become so entitled in possession as aforesaid, or if he or she shall be under the age of twenty-one years, then within twelve calendar months after he or she shall have attained that age, assume the surname and arms of B., and apply for and endeavour to obtain a royal licence or other proper authority for that purpose: And if the person so becoming entitled as aforesaid shall be a female and shall marry, then her husband shall within twelve calendar months after she shall have become entitled in possession as aforesaid, or after her marriage (which shall last happen), also assume the said surname and arms, and apply for and endeavour to obtain a royal licence or other proper authority for that purpose: And if the person so becoming entitled as aforesaid, or in the case of a married woman her husband, shall fail to comply with the direction last hereinbefore contained, not being prevented from so doing by death within the said period, then and in such case, and at the expiration of the said twelve calendar months, the estate of such person under this my will shall cease and determine; And if the person whose estate shall so determine shall be a tenant for life, the said hereditaments shall thenceforth go and remain to the use of my trustees during the life of such person, in trust to permit the rents and profits thereof to be received by the person or persons for the time being entitled to the said hereditaments in remainder immediately expectant on the death of such tenant for life, and so that if the person for the time being entitled as aforesaid shall be a minor, the said rents and profits shall be applied in the same manner, and my trustees shall have the same powers of management and otherwise as are hereinbefore directed and declared in that behalf during the minority of any person for the time being entitled to the said hereditaments as tenant for life or tenant in tail in possession under this my will; And if the person whose estate shall so determine shall be a tenant in tail, then and in such case the said hereditaments shall immediately go and devolve to the person or persons who would be entitled thereto under this my will if such tenant in tail were then dead without issue.

7. It shall be lawful for every person hereby made tenant for life of the hereditaments hereinbefore devised, either before or after he or she shall become entitled under this my will to the possession or receipt of the rents and profits of the said hereditaments, and either before or after his or her marriage, by any deed or deeds, or by his or her will (but subject and without prejudice to the uses and estates (if any) preceding the use or estate of the person making such appointment, and to the powers annexed to such preceding uses and estates, and also subject and without prejudice to the uses or estates (if any) which shall or may be limited in exercise of the same powers or any of them), to appoint to any wife or husband of the person for the time being exercising this power for her or his life, any yearly rent-charge not exceeding the sum of £—, to be charged on the said hereditaments, or any part thereof, and to be paid at such times and in such manner as to the person exercising this power shall seem meet, and with such powers and remedies for enforcing payment thereof by distress and entry upon and perception of the rents and profits of the said hereditaments as the person for the time being exercising this power shall think fit: PROVIDED ALWAYS, that if any tenant for life under this my will shall exercise the power hereinbefore contained of appointing a rent-charge to his or her wife or husband as aforesaid before he or she shall under this my will become entitled to the possession or the receipt of the rents and profits of the said hereditaments, then and in every such case the rent-charge to be so appointed as aforesaid shall not take effect in possession, or charge the hereditaments expressed to be charged therewith, or be payable, unless and until the person appointing the same as aforesaid shall under this my will become entitled to the possession or receipt of the rents and profits of the same hereditaments, or if he or she shall die previously thereto, then unless and until he or she would in consequence of the determination of the uses or estates preceding the use or estate hereby limited to him or her have become (if living) entitled to the possession or receipt of the rents and profits of the same hereditaments at any time during the life of his or her wife or husband (as the case may be) to or for whom such rent-charge shall be so appointed as aforesaid: PROVIDED ALSO that the said hereditaments shall not, under the exercise of the aforesaid powers, be at any one time subject or liable to the payment

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

7. Power to  
each tenant  
for life to  
jointure.

No rent-charge to take effect in possession unless person appointing same succeeds to the possession of the estates, or would have done so (if living) during life of wife or husband.

Proviso limiting the total amount of annual rent-



DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

charge  
under  
aforesaid  
powers.

of yearly rent-charges exceeding in the whole (with the said yearly rent-charge of £—— hereinbefore limited to my said wife, if the same shall for the time being be subsisting) the yearly sum of £——, so that if the said hereditaments or any part or parts thereof would, in case this present proviso had not been inserted, be charged with a greater yearly sum in the whole than the said sum of £——, the payment of the sum occasioning such excess, or such part thereof as shall occasion the same, shall during the time of such excess be suspended.

8. Power  
to each  
tenant for  
life to  
charge  
with por-  
tions for  
younger  
children.

8. IT shall be lawful for every person hereby made tenant for life of the hereditaments hereinbefore devised, either before or after he or she shall under this my will be in the actual possession or receipt of the rents and profits of the said hereditaments, and either before or after his or her marriage, by any deed or deeds, or by his or her will (but subject and without prejudice to the uses and estates (if any) preceding the use or estate hereby limited to him or her and to the powers annexed to such preceding uses or estates, and also subject and without prejudice to the uses or estates (if any) to be limited in exercise of the same powers or any of them), to charge the said hereditaments, or any part thereof, with any sum of money not exceeding the sum of £15,000 for the portions of his or her younger children who being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry, and for the advancement of sons presumptively entitled to portions under any power to be created for that purpose as hereinafter is mentioned: AND for this purpose the expression "younger children" shall be construed to mean and include every son of the person for the time being exercising this power (called in the remainder of this article "the appointor") not being at his birth or becoming during his minority an eldest or only son entitled for the time being under this my will to the said hereditaments for an estate tail in possession or in remainder immediately expectant on the life estate of the appointor, or on some estate prior in order of limitation to such life estate: AND ALSO (a) (if the appointor shall by deed or will so declare but not otherwise), any son who being an eldest or only son entitled in remainder as aforesaid when he attains the age of twenty-one years shall die before

Definition  
of expres-  
sion  
"younger  
children."

(a) See p. 331, *supra*, note.

his estate tail falls into possession without having disentailed the said hereditaments or any of them with the consent of the protector of the settlement: AND ALSO every daughter of the appointor not being at her birth or becoming during her minority an eldest or only daughter indefeasibly entitled to the said hereditaments for an estate tail in possession, or in remainder immediately expectant as aforesaid: PROVIDED ALWAYS that if only one child of the appointor shall, being a son, attain the age of twenty-one years, or being a daughter attain that age or marry, such child shall not have more than £5000 for his or her portion; and if two younger children and no more shall, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, such two children shall not have more than £8000 between them for their portions; and if only three younger children shall, being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, such three children shall not have more than £12,000 between them for their portions; and the excess of the sum originally charged over and above the said sum of £5000, £8000, or £12,000, as the case may be, except such part (if any) of the money constituting the excess as shall have been raised for the advancement of any son who shall die or become an eldest or only son entitled as aforesaid while under the age of twenty-one years, shall sink into the said hereditaments and cease to be charged thereon: PROVIDED ALSO that if any tenant for life under this my will shall exercise the power of charging with portions hereinbefore contained before he or she shall become entitled to the possession or receipt of the rents and profits of the said hereditaments, then and in every such case the sum of money to be charged for portions under such exercise of the same power shall not be a lien or charge upon the hereditaments expressed to be charged with the same, or become vested in or payable to any person or persons whomsoever, nor carry interest unless and until the person so charging the same hereditaments with portions as aforesaid, or some issue of his or hers, shall, under or by virtue of this my will, become entitled to the actual possession or receipt of the rents and profits of the same hereditaments: PROVIDED ALSO, that the said hereditaments shall not, under the power of charging with portions hereinbefore contained, be made subject or liable to the payment of any sum or sums

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

Proviso  
reducing  
amount to  
be charged  
if only one  
two, or  
three  
younger  
children.

Charges of  
portion not  
to take  
effect unless  
person exer-  
cising  
power, or  
his or her  
issue shall  
become en-  
titled in  
possession.

Proviso  
limiting the  
total  
amount to  
be charged  
for portions

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

under afore-  
said power.

9. Power  
to limit  
term to  
trustees  
to secure  
jointure and  
raise por-  
tions to be  
charged  
under  
last  
article.

Power to  
authorise  
trustees to  
raise annual  
sum for  
mainte-  
nance of  
minors  
entitled to  
portions in  
expectancy.

And to raise  
one half of  
presumptive  
portions of  
sons for  
advance-  
ment.

10. Power to  
tenants for

of money exceeding the principal sum of £—— in the whole for the portions of younger children of the persons hereby made tenants for life, and moneys to be charged for portions as aforesaid shall have precedence according to the priority in order of limitation of the estates of the several persons exercising the said power.

9. If any tenant for life shall exercise the powers of charging in favour of a wife or husband and younger children hereinbefore conferred on him or her, or either of such powers, it shall be lawful for him or her by the same or any other deed, or by his or her will, to limit and appoint the hereditaments comprised in such charge to any trustee or trustees for any term or terms of years without impeachment of waste upon such trusts for better securing the payment of the annual sum or yearly rent-charge to be appointed to a wife or husband as aforesaid, and for raising the money to be charged for the portions of younger children as aforesaid, together with the costs and expenses of and incidental to the execution of such trusts as the person for the time being exercising this power shall think fit: AND the person exercising this power may in and by such appointment direct or authorise the trustees or trustee of the term to be thereby created during the minority of any child who if of full age would be entitled in possession to a portion under such appointment to raise out of the rents and profits of the hereditaments comprised in the same term or otherwise such annual sum as the person exercising this power shall direct, or as the said trustees or trustee shall think fit, not exceeding what interest on the expectant portion of such minor would amount to after the rate of £4 per cent. per annum, and to apply the same for the maintenance and education of such minor, with liberty for the said trustees or trustee to pay the same to the guardian or any of the guardians of such minor for the purpose aforesaid, without being liable to see to the application thereof: AND the person for the time being exercising this power may also, if he thinks fit, by any such appointment as aforesaid, authorise the trustees or trustee to raise by mortgage or otherwise any part or parts not exceeding together one moiety of the presumptive portion of any son under such appointment, and to apply the same for the advancement, preferment, or benefit of such son.

10. IT shall be lawful for every person hereby made tenant

for life of the hereditaments hereinbefore devised, as and when by virtue of this my will he or she shall be entitled to the possession or to the receipt of the rents and profits of the said hereditaments, and also for my trustees during the minority of any person for the time being entitled under this my will to the possession or receipt of the rents and profits of the said hereditaments as tenant for life or tenant in tail by purchase by any deed or deeds to appoint, &c. (*Power to lease for twenty-one years, and to grant building and mining leases, see supra, pp. 310 to 312, mutatis mutandis.*)

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT

life, &c., to  
lease.

11. IT shall be lawful for my trustees, upon the request in writing of any person for the time being entitled under this my will to the actual possession or receipt of the rents and profits of the hereditaments hereinbefore devised as tenant for life, if such person shall be of full age, and during the minority of any person for the time being entitled under this my will to the possession or receipt of the rents and profits of the said hereditaments as tenant for life or tenant in tail by purchase at the discretion of my trustees to expend any sum or sums of money in or about the improvement of any land hereinbefore devised, if and whenever the proposed improvement will, in the opinion of my trustees, permanently increase the value of the estate: And for this purpose the expression "the improvement of land" shall have the same meaning as is assigned to it by section 9 of the Land Improvement Act, 1864, substituting "my trustees" for "the Commissioners:" (a) AND it shall be lawful for my trustees upon such request or at such discretion as aforesaid, to raise any sum or sums of money which may be required to be expended in the improvement of land as aforesaid by mortgage of the hereditaments hereinbefore devised or any part thereof.

11. Power  
to expend  
money in  
improvements and  
to mortgage  
for that  
purpose.

12. IT shall be lawful for my trustees, upon the request in writing of any person for the time being entitled under this my will to the actual possession or receipt of the rents and profits of the hereditaments hereinbefore devised as tenant for life, if such person shall be of full age, and during the minority of any person for the time being entitled under this my will to the possession or receipt of the rents and profits of the said here-

12. Power of  
sale and  
exchange.

(a) Subsequent Acts (28 & 29 Vict. c. 75, sec. 15; 33 & 34 Vict. c. 56; 34 & 35 Vict. c. 84) extend the provisions of the Land Improvement Act 1864, to other matters, but it is not thought necessary to include these in the power conferred by the above Precedent.

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

To enfranchise copyholds,

and to make partition,

13. Power to trustees to revoke uses and limit new uses, to carry into effect sales, &c.

14. Trustees to lay out sale moneys in the purchase of other hereditaments,

ditaments, as tenant for life or tenant in tail by purchase at the discretion of my trustees to sell the said hereditaments or any part thereof, or any easements, rights or privileges to be exercised or enjoyed in, over, upon, or under the said hereditaments, or any part thereof, or to exchange the said hereditaments, or any part thereof, for any other hereditaments in England or Wales, and upon any such exchange, to give or receive money for equality of exchange: [AND ALSO TO ENFRANCHISE any copyhold or customary hereditaments held of any manor hereby devised either in consideration of a gross sum of money or of a yearly rent to be charged upon and issuing out of the hereditaments to be so enfranchised, or partly for one and partly for the other of such considerations, and either with or without a regrant of any rights of common or other rights or privileges annexed to the said hereditaments while copyhold, and upon such terms and conditions in all respects as my trustees shall think fit: AND ALSO to make partition of any hereditaments an undivided part or share whereof is hereby devised with the person or persons entitled to or having power to dispose of the other undivided part or share, or parts or shares thereof, and upon any such partition to give or receive any money by way of equality of partition:] AND ALSO to raise any money which may be required for equality of exchange [or partition] by a mortgage of the hereditaments hereby settled, or any part thereof.

13. FOR the purpose of carrying into effect any such sale or exchange [enfranchisement or partition] as aforesaid, it shall be lawful for my trustees to revoke by deed the uses for the time-being subsisting under this my will in the hereditaments [or undivided share of hereditaments] to be sold or exchanged [enfranchised or partitioned] as the case may be, and to appoint by deed any new use or uses concerning the same, but so that every such revocation and new appointment shall be subject and without prejudice to any lease or mortgage which may have been previously made of the said hereditaments [or share of hereditaments] under any of the powers and provisions of this my will.

14. MY trustees shall receive the moneys to arise from any such sale or exchange [enfranchisement or partition] as aforesaid, and may apply the same or any part thereof in or towards satisfaction of any principal sum or sums of money for the time

being charged on the hereditaments subject to the uses of this my will or for any purpose for which money is in and by this my will authorised to be raised by mortgage of the hereditaments hereinbefore devised, or any part thereof, and if and so far as such moneys shall not be applied in manner aforesaid, my trustees shall invest the same in the purchase of other hereditaments to be situate in England or Wales, being freehold or copyhold of inheritance, or leasehold convenient to be held with the hereditaments for the time being subject to the uses of this my will, with liberty to make any such purchase subject to special conditions as to title or otherwise, yet so that during the life of any adult tenant for life in possession under this my will, such purchase shall be made with his or her consent in writing, AND my trustees shall settle the hereditaments so to be purchased or received in exchange [or upon partition] as aforesaid, if of freehold tenure, to the uses, upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning the freehold hereditaments hereinbefore devised, and if of copyhold or leasehold tenure, upon the trusts, and with and subject to the powers and provisions hereinafter declared or referred to concerning the copyhold and leasehold hereditaments hereinafter devised and bequeathed, but so as not to increase or multiply charges or powers of charging.

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

and to  
settle same  
to uses and  
on trusts of  
will.

15, 16, 17. (*Provisions as to renewal of leaseholds, sales to railway companies, and sales subject to exception of mines, &c., supra*, pp. 317, 318, *mutatis mutandis*.)

15, 16, 17.  
Provisions  
as to renew-  
ing lease-  
holds, &c.

18. MY trustees may postpone the investment in the purchase of hereditaments of the moneys to arise from any such sale or exchange [enfranchisement or partition] as aforesaid for so long as they shall think fit, and in the meantime may invest the same moneys in their names in any of the modes of investment hereinafter authorized, and may vary the said investments from time to time into or for others of the same or a like nature, but so that every investment or variation of investment made during the life of any person entitled for the time being to the hereditaments hereinbefore devised as tenant for life in possession, and who shall be of full age, shall be with his or her consent in writing, and the income arising from such investment shall be paid and applied to the person or persons, and in the manner to whom and in which the rents and profits of the hereditaments to be purchased therewith would be payable or applicable, in

18. Trustees  
to invest  
moneys  
until pur-  
chase,

and pay  
income to  
persons  
entitled to  
rents of  
heredita-  
ments to be  
purchased.

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

19. Mortgages not to be bound to inquire, &c.

20. Devise and bequest of copyhold and leaseholds to trustees, upon trusts to correspond with uses of freehold.

21. Bequest of plate, &c., as heirlooms to go with real estate.

case such purchase or purchases and settlement as aforesaid were then actually made.

19. UPON any mortgage to be made by my trustees or by the trustees or trustee of any term created under any of the powers of this my will, and which mortgage shall purport to be made in exercise of the trusts or powers for that purpose reposed and vested in the same trustees or trustee, the person or persons advancing money thereon shall not be bound or concerned to see or inquire whether such money is actually required for the purpose of such trusts or powers or otherwise as to the propriety of such mortgage.

20. I GIVE, DEVISE, AND BEQUEATH all my messuages, lands, tenements, and hereditaments, wheresoever situate, being copyhold, or leasehold for a life or lives or for years, unto my trustees their heirs, executors, administrators, and assigns respectively, IN TRUST, out of the rents and profits of the said copyhold premises, to pay and render the customary rents and services, and out of the rents and profits of the said leasehold premises to pay the rents, and observe and perform the covenants and conditions reserved by and contained in the leases under which the same shall be held, and by and on the lessee's part to be paid, observed, and performed, and subject thereto as to all the said copyhold and leasehold premises, UPON such trusts, and with, under, and subject to such powers and provisions as will correspond as nearly as the difference of tenure will permit, with the uses, trusts, powers, and provisions hereinbefore declared and contained concerning the freehold hereditaments hereinbefore devised, but so as not to increase or multiply charges or powers of charging, and so that any copyhold hereditaments not admitting of the creation of estates tail, and any leasehold hereditaments for years shall not vest absolutely in any person hereby made tenant in tail by purchase of the said freehold hereditaments, unless he or she shall attain the age of twenty-one years, but on the death of such person under that age shall go and devolve as if the same were freehold of inheritance included in the devise of hereditaments of that tenure hereinbefore contained.

21. I GIVE AND BEQUEATH all my plate, pictures, books, and furniture, which shall at my decease be in or about my said capital messuage or mansion-house, called —, or belong or be appropriated thereto, unto my trustees, IN TRUST to permit the

same to be held and enjoyed as heirlooms by the person or persons for the time being entitled to the said capital messuage or mansion-house under the limitations of this my will as nearly as the rules of law and equity will permit, but so that the said heirlooms shall not vest absolutely in any person hereby made tenant in tail by purchase of the said capital messuage or mansion-house, unless he or she shall attain the age of twenty-one years, but upon the death of such person under that age shall go and devolve to the person or persons who shall thereupon become entitled to the said capital messuage or mansion-house under the aforesaid limitations: AND I DIRECT that an inventory shall be made as soon as conveniently can be after my decease of the plate and other articles hereinbefore bequeathed as heirlooms, and that one copy of such inventory shall be signed by my trustees, and delivered to and kept by the person for the time being entitled to the use of the said heirlooms under this my will, and that one other copy thereof shall be signed by the person for the time being entitled as last aforesaid and retained by my trustees: AND I DIRECT that the person or persons for the time being entitled to the use of the said heirlooms under this my will shall keep the same in a good state of preservation and adequately insured against loss or damage by fire: BUT I expressly declare that my trustees shall not be bound or obliged to see that the said heirlooms are preserved or insured as aforesaid, or be answerable for any loss or injury which may happen thereto, unless in some specific case they or he shall be called on to interfere by some person or persons beneficially interested in the said heirlooms under this my will.

DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

Inventory to  
be made.

Usufruct-  
uary to  
preserve  
heirlooms,  
but trustees  
not to be  
responsible  
for injury.

22. I GIVE AND BEQUEATH, &c. (*Bequest of legacies*).

22. Legacies.

23. I GIVE AND BEQUEATH all my personal estate not hereby otherwise disposed of unto my trustees, UPON TRUST that my trustees shall call in and convert into money the same or such part thereof as shall not consist of money, and shall with and out of the money produced by such calling in and conversion and with and out of my ready money, pay my funeral and testamentary expenses and debts, and the legacies hereby bequeathed, and shall stand possessed of the residue of the said moneys, upon the trusts, and with and subject to the powers and provisions hereinbefore declared and contained concerning the moneys to arise from any sale of the freehold hereditaments hereinbefore devised under the power of sale hereinbefore

23. Bequest  
of residuary  
personalty  
upon trusts  
of moneys  
arising from  
sale of free-  
holds.



DEVISE OF  
REAL ESTATE  
IN STRICT  
SETTLEMENT.

24. Invest-  
ment clause.

contained, but so as not to multiply charges or powers of charging.

24. ALL moneys, &c. (*General investment clause, supra p. 451*).

25. I DEVISE, &c. (*Devise of trust and mortgaged estates, supra, p. 453*).

IN WITNESS, &c. (a).

### No. XVII.

OF TESTA-  
TOR'S PRO-  
PERTY WITH  
VARIOUS  
SPECIAL  
PROVISIONS.

DEVISE and BEQUEST of REAL and PERSONAL ESTATE ;  
BEQUEST of PERSONAL ESTATE to TRUSTEES to pay  
Debts, &c., and INVEST surplus and apply income  
for MAINTENANCE of SON during his MINORITY, and  
accumulate surplus ; TRUST for SON when he  
attains TWENTY-ONE, but if he should die under  
twenty-one, then for Sister absolutely ; DEVISE of  
REAL ESTATE to TRUSTEES, subject to Mortgages  
thereon, UPON TRUST to manage and lease same  
until the Son should attain twenty-one, and subject  
thereto, to SON absolutely, but if he should die a  
Minor, then to NEPHEWS equally in Fee ; DIREC-  
TION to TRUSTEES to apply RENTS during minority  
of SON for his MAINTENANCE, and accumulate  
SURPLUS ; POWER to apply SURPLUS INCOME and  
ACCUMULATIONS in Payment of Mortgages and  
other Debts ; POWER to concur in TRANSFER of  
MORTGAGES, or to SELL or MORTGAGE for Payment  
of MORTGAGES, &c. ; GENERAL POWER of SALE or  
MORTGAGE for Payment of DEBTS ; USUAL PRO-  
VISIONS.

Bequest of  
personal  
estate to  
trustees.

I, A. B., of, &c. (*commencement and appointment of executors and trustees and guardians, see supra, p. 448*) : I GIVE AND BEQUEATH all my personal estate and effects (except chattels real included in the devise of real estate hereinafter contained) unto my trustees, UPON TRUST that my trustees shall call in and convert into money the same or such part thereof as shall not consist of money, and shall apply the moneys to arise from such calling in and conversion, and the money of which I shall be

Upon trust  
to convert  
same into  
money, and  
thereout  
pay debts,  
&c., and

(a) In the above Precedent there is no power of appointing new trustees, the power in Lord Cranworth's Act being considered sufficient.

possessed at my death, so far as the said moneys will extend, in the payment of my funeral and testamentary expenses and debts (including mortgage debts affecting my real estates hereinafter devised), and shall invest the surplus (if any) of such moneys with power for my trustees to vary the investments thereof from time to time, and shall apply the income arising from such investments in or towards the maintenance of my son G. B., until he shall attain the age of twenty-one years or previously die, with power for my trustees, at their discretion, at any time during the minority of my said son, to sell and convert into money the whole or any part of the said trust funds, and to apply the moneys arising thereby for the advancement, preferment, or otherwise for the benefit of my said son, as my trustees shall think fit, AND SUBJECT to the trusts aforesaid shall stand possessed of the said trust funds, and the income thereof, or so much thereof respectively as shall not be applied in manner aforesaid, IN TRUST for my said son G. B., as and when he shall attain the age of twenty-one years, but if my said son shall die under that age, then IN TRUST for my sister S. H., for her sole and separate use: I GIVE, DEVISE, AND BEQUEATH all my messuages, farms, lands, tenements, and hereditaments of every tenure, situate at —, in the county of —, and all other my real and leasehold estates (if any) whatsoever and wheresoever, except estates vested in me upon any trusts, or by way of mortgage (all which premises included in this present devise and bequest are hereinafter called "my real estates") unto and to the use of my trustees, UPON TRUST that my trustees shall receive the rents and profits of, and manage my real estates and every part thereof, as they may think proper, with power to demise or let the same, or any part or parts thereof, either from year to year, or for any term or number of years, either upon repairing, building, or husbandry leases, and generally upon such terms as my trustees shall think proper (yet so that no demise or lease shall be made of any copyhold or customary hereditaments contrary to the custom of the manor or manors of which the same respectively shall be holden), with power to accept surrenders from and make allowances to and arrangements with tenants and others, and with all other powers expedient or desirable for the due management of my real estates, until my said son G. B. shall attain the age of twenty-one years or previously die: AND UPON TRUST that my trustees do and shall

OF TESTA-  
TOR'S PRO-  
PERTY WITH  
VARIOUS  
SPECIAL  
PROVISIONS.

invest  
surplus (if  
any),

and apply  
income for  
mainte-  
nance of  
testator's  
son.

Power to  
raise money  
for advance-  
ment of son,  
and subject  
to aforesaid  
trusts, in  
trust for son  
absolutely,  
on his  
attaining  
twenty-one.  
If he should  
die under  
twenty-one  
then to  
sister  
absolutely.

Devise of  
real estate,

To trustees  
(subject to  
charges  
hereon),  
upon trust  
to manage  
and lease  
same until  
son attains  
twenty-one,

OF TESTA-  
TOR'S PRO-  
PERTY WITH  
VARIOUS  
SPECIAL  
PROVISIONS.

and subject  
thereto to  
son in fee ;  
if son dies  
under  
twenty-one,  
to nephews.

Direction to  
keep down  
interest on  
mortgages  
during son's  
minority.

Power of main-  
tenance and  
accumula-  
tion of  
surplus.

Power to  
apply accu-  
mulations in  
payment  
of debts

Power to  
concur in  
transfer of  
mortgages,  
&c., or to  
sell or mort-  
gage for pay-  
ment of  
mortgages.

assure my real estates (subject to the mortgages, incumbrances and charges then existing thereon) unto and to the use of my said son G. B., his heirs, executors, administrators, and assigns respectively, when and so soon as he shall attain the age of twenty-one years: BUT IF any said son shall die under the age of twenty-one years, then UPON TRUST that my trustees do and shall assure the same (subject as aforesaid) unto and to the use of my nephews, L. M. and N. O., their heirs, executors, administrators, and assigns for ever equally as tenants in common: AND DURING THE MINORITY of my said son I direct that my trustees shall apply the net rents and profits of my real estates in the first place in and towards payment of the interest which for the time being shall be due and payable in respect of the mortgage debts affecting the same, or such of the said debts as shall for the time being remain due and unsatisfied, in aid of my personal estate, and shall in the next place apply the said rents and profits, or any part thereof, for or towards the maintenance or education, or otherwise for the benefit of my said son, and shall invest the surplus (if any) of such rents and profits so as to accumulate at compound interest, with liberty to vary the investments thereof from time to time, and shall stand possessed of the said accumulations, IN TRUST for the person or persons who shall become absolutely entitled to my real estates under the trusts hereinbefore declared, with liberty nevertheless for my trustees to resort to the accumulations of any preceding year or years, and to apply the same in any succeeding year or years for the maintenance and education, or otherwise for the benefit of my said son; and with liberty also for my trustees, at any time or times, to apply the said surplus rents and profits and the accumulations thereof, or any part or parts thereof respectively in or towards the payment and discharge of the mortgage debts and principal moneys which for the time being shall affect my real estates or any of them, or my other debts generally, or any part or parts thereof respectively: AND I AUTHORISE and empower my trustees at any time or times, or from time to time during the minority of my said son, to join in any transfer of any mortgage or other charge or incumbrance upon all or any part of my real estates, or to give further security for, or to pay off all or any part of the money secured by any such mortgage, charge, or incumbrance, and for that purpose to adjust and settle any accounts with any mortgagee or incumbrancer, and if my trustees

shall think fit, to raise any further sum or sums in order to discharge any such mortgage, charge, or incumbrance, and the interest thereon respectively, together with the costs of procuring and raising the same, either by mortgage or by absolute sale, or other disposition of all or any part of my real estates, or by, with, or out of the rents and profits of my real estates, or any of them, or by any other reasonable ways and means, and to apply the moneys so to be raised in discharge of such mortgage, charge, or incumbrance accordingly: AND I ALSO empower my trustees, by mortgaging, selling, or otherwise disposing of my real estates, or any of them, or by, with, and out of the rents and profits of my real estates, or any of them, or by all or any of the aforesaid ways or means, or by any other reasonable ways or means, to levy and raise any sum and sums of money which my trustees may think fit to levy and raise for the payment of my funeral and testamentary expenses and my other and remaining debts, and to pay and apply the moneys to be levied and raised by the ways and means aforesaid in or towards satisfaction and discharge of my funeral and testamentary expenses and debts accordingly: PROVIDED ALWAYS, that as between the person or persons entitled to my personal estate, and the person or persons entitled to my real estates, my personal estate is to be considered as the primary fund, and my real estates the secondary fund, for the payment of my funeral and testamentary expenses, and my mortgage and other debts: AND I DECLARE that every mortgage made under the foregoing powers may contain a power of sale, and any other powers and provisions which my trustees shall think proper, and that no purchaser or mortgagee of any part of my real estates, upon any sale or mortgage expressed to be made under the trusts and powers of this my will, shall be bound or concerned to see whether my personal estate shall have been insufficient for the payment of my debts, nor whether the money paid or advanced by him is actually wanted or ought to be raised for all or any of the purposes aforesaid, or otherwise as to the necessity or propriety of such sale or mortgage, nor shall such purchaser or mortgagee be affected by notice that such sale or mortgage is unnecessary or improper. (*Investment clause. Devise of trust and mortgaged estates, supra*, pp. 451, 453.)

OF TESTA-  
TOR'S PRO-  
PERTY WITH  
VARIOUS  
SPECIAL  
PROVISIONS.

General  
power of  
sale or mort-  
gage for  
payment of  
other debts.

Personal  
estate to be  
nevertheless  
primary  
fund for  
payment of  
debts.

IN WITNESS, &c.

## No. XVIII.

APPOINT-  
MENT UNDER  
A POWER  
AND SPECIAL  
TRUSTS FOR  
DAUGHTERS.

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WILL of a FEMALE: APPOINTMENT (a) by TESTATRIX of TRUST MONEYS comprised in a Settlement to secure LEGACIES for five CHILDREN, and to pay the residue to TRUSTEES, upon Trust to INVEST the same, and to apply the income for the MAINTENANCE of one of the TESTATRIX'S DAUGHTERS as the TRUSTEES may think fit; After the attempt of DAUGHTER to anticipate the same, to apply the Income during her life for the benefit of the TESTATRIX'S other CHILDREN, as the TRUSTEES may think fit; After her decease the TRUST MONEYS to be in trust for five CHILDREN equally; BEQUEST of FURNITURE to TRUSTEES for use of another DAUGHTER, and after her decease to divide same amongst surviving CHILDREN; INVENTORY of FURNITURE to be made; DEVISE and BEQUEST of RESIDUARY Real and Personal ESTATE, upon Trust to convert the same into Money, and to invest sufficient MONEYS to secure to first-named DAUGHTER a certain annual sum during her LIFE, and also to set apart a further sum; TRUSTS of Residuary MONEYS as to four fifth parts thereof for four CHILDREN equally; The remaining fifth part and the further sum directed to be set apart to be held by the TRUSTEES upon Trusts for one of Testatrix's DAUGHTERS and her CHILDREN; HOTCHPOT clause; TRUSTS in default of CHILDREN; Power to advance MONEYS to HUSBAND on his security.

Recite  
settlement,  
reserving  
power of  
appoint-  
ment  
amongst  
testatrix's  
children.

I, A. B., of, &c. (commencement and appointment of executors, and trustees, see *supra*, p. 448): WHEREAS by an indenture dated the — day of — and made between (*parties*), a moiety of £5316 11s. 10d. £3 per Cent. Consolidated Annuities, standing in the names of L. M. and N. O., was settled upon the

(a) In the above Precedent the Will is made under a special power. Where a will is made under a general power, the executors of the testator can give a good discharge for the appointed fund without the concurrence of the beneficial appointees: *Re Hoskin's trusts*, L. R. 6 C. D. 281.

trusts therein and in part hereinafter mentioned (that is to say), from and after my decease, and the decease of my late husband (subject as therein mentioned), IN TRUST for all the children of our marriage in such shares, manner and form as I, notwithstanding my coverture, and whether sole or covert, by any deed or deeds executed as therein mentioned, or by my will should appoint: AND WHEREAS my said late husband died in the year —, leaving issue of our said marriage, six children and no more (*viz.*), C. B., D. B., F. B., now E. P. (wife of R. P. of, &c.), F. B., G. B., now G. S. (the wife of J. S. of, &c.), and H. B.: AND WHEREAS I have not hitherto, either wholly or partially, exercised the power of appointment given or reserved to me by the said recited indenture: AND WHEREAS I am desirous of exercising the said power of appointment, and of devising and bequeathing all my property, both real and personal, in manner hereinafter mentioned: NOW IN EXERCISE and execution of the said power for this purpose given to me by the said recited indenture, and of all other powers enabling me in this behalf, I do by this my will appoint that the said L. M. and N. O., their executors, administrators, and assigns, shall, with all convenient speed after my decease, with and out of the said moiety of £5316 11s. 10d. £3 per Cent. Consolidated Annuities so settled by the said recited indenture as aforesaid, and the trust moneys, stocks, funds, and securities into which the same moiety or any part thereof may for the time being be converted (which moiety stocks, funds, and securities, are hereinafter called the settled trusts funds), raise and pay the sum of £20 to each of my said children, D. B., E. P., F. B., G. S., and H. B., for their respective absolute benefit, and shall transfer and pay the surplus of the settled trust funds unto my trustees, UPON TRUST during the life of my said daughter C. B. to apply the income of the said surplus in such manner as my trustees shall in their uncontrolled discretion think proper and most beneficial for the maintenance, support, and comfort of my said daughter C. B., until she shall assign, charge, or otherwise dispose of the said income or some part thereof, by way of anticipation, or attempt so to do, or shall do or suffer some act or thing whereby the said income, if payable to herself, would become vested in some other person or persons: AND if she shall make any such assignment, charge, or other disposition, by way of anticipation, or attempt so to do, or suffer any such act or thing as aforesaid, THEN UPON TRUST

APPOINTMENT UNDER A POWER AND SPECIAL TRUSTS FOR DAUGHTERS.

Death of husband leaving six children.

That power has not been exercised.

Desire to exercise testamentary power.

Appointment by testatrix of trust moneys comprised in settlement,

to raise legacies for five children, and to pay residue to trustees.

And to apply the income for the maintenance of one of the testatrix's daughters as the trustees may think fit.

After attempt of daughter to anticipate the same, to apply the

APPOINTMENT UNDER  
A POWER  
AND SPECIAL  
TRUSTS FOR  
DAUGHTERS.

income during her life for the benefit of other children as the trustees may think fit.

After her decease the trust moneys to be in trust for five children equally.

Bequest of furniture, &c., to trustees for use of another daughter.

After her decease to divide the same among surviving children.

Inventory of furniture to be made.

Devise and bequest of residuary real and personal estate upon trust to convert the same into money,

during the remainder of the life of my said daughter C. B., to apply the said income in such manner as they shall in their uncontrolled discretion think proper, for the maintenance and support, or otherwise for the benefit of all or any one or more exclusively of the other or others of my said children: AND FROM and immediately after the decease of my said daughter C. B., the said surplus of the settled trust funds shall be IN TRUST for my said five children, D. B., E. P., F. B., G. S., and H. B., in equal shares absolutely, and as to such of my said daughters as are or shall be under coverture, for their respective separate use exclusively of any present or future husband: I BEQUEATH all my furniture, plate, linen, china, books, and household effects, unto my trustees, upon trust that my trustees shall permit my said daughter H. B. (if she shall not have been married at the time of my decease) to have the use thereof during her life, and shall at her decease, or immediately upon my decease if she shall have been married in my lifetime, divide the same as fairly and equally as conveniently may be, according to the uncontrolled judgment and discretion of my trustees, amongst such of my said six children (if any) as shall be then living: And in case none of my said children shall be then living, the same furniture, plate, linen, china, books, and household effects, shall sink into and form part of my residuary personal estate hereinafter bequeathed: AND I DIRECT that in case the aforesaid bequest of the said furniture, plate, linen, china, books, and household effects in trust for my said daughter H. B., for her life shall take effect, my trustees shall, as soon as conveniently may be after my decease, cause an inventory thereof to be taken, and two copies to be made of the said inventory, and my trustees shall sign each of the said copies, and cause each of them to be signed by my said daughter, and shall keep one of the said copies, and leave the other with her: AND I DECLARE that after the delivery of the said furniture and effects to my said daughter, my trustees shall not be liable to see to the preservation thereof, nor be answerable for any loss or injury thereof which may happen during the continuance of my said daughter's interest therein: I GIVE, DEVISE, AND BEQUEATH all my real and personal estate not hereby otherwise disposed of (except estates vested in me upon any trusts or by way of mortgage) unto my trustees, UPON TRUST, &c. (*Trusts for sale and conversion into money, supra*, p. 449); AND SHALL

out of the residue of the said moneys set apart and invest in the names or name of my trustees in or upon any of the stocks, funds, or securities hereinafter authorised as investments, a sum of money the income whereof when so invested will (at the time of such investment), together with the then income of the surplus of the settled trust funds hereinbefore appointed in trust for the maintenance, support, and comfort of my said daughter C. B., make up the clear annual sum of £——, with power for my trustees from time to time, at their or his discretion, to vary the said investments into or for others of the same or a like nature, and shall, during the life of my said daughter C. B., apply the income of the fund to be so appropriated as aforesaid, in the same manner and with the same directions as are hereinbefore declared concerning the income of the surplus of the settled trust funds during the life of the said C. B. : AND FROM AND AFTER the decease of the said C. B. the said appropriated fund shall sink into and form part of the ultimate residue of the proceeds of my real and personal estate, the trusts whereof are hereinafter declared : And upon further trust that my trustees shall out of the proceeds of my real and personal estate set apart the further sum of £—— for the purposes and subject to the provisions hereinafter contained concerning the same : AND SUBJECT to the trusts aforesaid, the ultimate residue of the proceeds of my real and personal estate shall be divided into five equal parts or shares, and my trustees shall stand possessed of one such fifth part or share, IN TRUST for my said son D. B. absolutely, and of one other such fifth part or share, IN TRUST for my said son F. B. absolutely, and of one other such fifth part or share, IN TRUST for my said daughter G. S. absolutely, and of one other such fifth part or share, IN TRUST for my said daughter H. B. absolutely (the shares of the said G. S. and H. B. respectively to be for their separate use respectively) : AND I DECLARE that my trustees shall stand possessed as well of the said sum of £—— so hereinbefore directed to be set apart by them or him as aforesaid, as also of the remaining one equal fifth part or share of the ultimate residue of the proceeds of my real and personal estate, UPON TRUST that my trustees shall invest the same, with power from time to time to vary the investments thereof, and shall stand possessed of the moneys last hereinbefore directed to be invested, and the stocks, funds, and securities, in or upon which the same

APPOINTMENT UNDER A POWER AND SPECIAL TRUSTS FOR DAUGHTERS.

and to invest sufficient moneys to secure to first-named daughter a certain annual sum during her life,

and also to set apart a further sum.

Trusts of residuary moneys as to four fifth parts thereof for four children equally.

The remaining fifth part and the further sum directed to be set apart to be held by the trustees upon trusts for one of testatrix's daughters and her children.



APPOINT-  
MENT UNDER  
A POWER  
AND SPECIAL  
TRUSTS FOR  
DAUGHTERS.

Hotchpot  
clause.

Trusts in  
default of  
children.

Power to  
advance  
moneys to  
husband on  
his security.

shall be invested (hereinafter called E. P.'s portion), upon the trusts following (that is to say), IN TRUST to pay the income thereof to my said daughter E. P. during her life for her sole and separate use, and so that she shall not have power while under coverture to dispose thereof in the way of anticipation : AND AFTER the decease of the said E. P., IN TRUST for all or such one or more of the children and remoter issue of the said E. P. (such remoter issue being born in her lifetime), at such ages or times, age or time, in such shares, if more than one, and generally in such manner as the said E. P. shall by deed or will appoint, and in default of such appointment, and so far as any such appointment shall not extend, IN TRUST, &c. (*Trusts for the children of E. P. equally, supra*, p. 449 *mutatis mutandis*) : PROVIDED ALWAYS, that no child of my said daughter E. P., who or whose issue shall take any part of E. P.'s portion under any such appointment as aforesaid, shall be entitled to any share of the unappointed part thereof, without bringing the share or shares appointed to him or her, or his or her issue, into hotchpot, unless my said daughter shall by such appointment direct the contrary (*Usual power of advancement for children of E. P., supra*, p. 450 *mutatis mutandis*) : AND IN CASE there shall be no issue of my said daughter in whom E. P.'s portion shall become absolutely vested under this my will, the same portion shall (subject and without prejudice to the trusts, powers, and purposes aforesaid) remain and be upon and for such trusts (as *E. P. shall appoint by will, and in default of appointment for her next of kin, according to the Statutes of Distribution, supra*, pp. 208, 209) : AND I HEREBY EMPOWER my trustees at any time or times, upon the written request of my said daughter E. P., to advance and lend to her said husband the said R. P., at interest on his personal security, and on security of a policy or policies of assurance on his life in an amount equal to the sum or sums to be so lent, the whole or any part of E. P.'s portion : PROVIDED ALWAYS, that in every such case the said R. P. shall enter into a covenant with my trustees for keeping on foot such policy or policies of assurance, and for paying all future premiums thereon : but my trustees shall nevertheless have full power, with the written consent of my said daughter E. P. during her life, and after her decease at their or his discretion, to apply any part of the income of E. P.'s portion in or towards payment of the premium or premiums on any such

policy or policies (*Investment clause; Devise of trust and mortgage estates, supra*, pp. 451, 453).

IN WITNESS, &c.

APPOINTMENT UNDER  
A POWER  
AND SPECIAL  
TRUSTS FOR  
DAUGHTERS.

### No. XIX.

WILL of a MARRIED WOMAN : APPOINTMENT by her  
under a power contained in a SETTLEMENT of a  
share of TRUST MONEYS in favour of her HUSBAND  
for life, and after his decease in favour of her sur-  
viving CHILDREN and the issue of CHILDREN dying  
in her lifetime.

OF A  
MARRIED  
WOMAN.

I, A. B. (*testatrix*), the wife of, &c., HEREBY DECLARE this to be my last will and testament : WHEREAS by an indenture dated the — day of —, and made between my late father, C. D., since deceased, of the one part, and E. F., of, &c., and G. H., of, &c., of the other part, a certain part or share of the moneys to arise from the sale of certain freehold and leasehold hereditaments and premises in the same indenture comprised, and of the rents and profits of the same premises, and the accumulations thereof, from and after the death of my said father, and until the same should be sold, were limited and settled, IN TRUST for myself for my separate use for life, and after my death IN TRUST for all or such one or more exclusively of the other or others of my children and remoter issue (such remoter issue being born in my lifetime), in such shares and manner as I should by my last will and testament, notwithstanding my coverture, give, bequeath, direct, or appoint the same, with a further power for me by my said will to direct that the dividends and interest given in trust to me as aforesaid might be paid to any husband of mine for his life : AND WHEREAS I have eight children now living, all of whom have attained the age of twenty-one years, NOW THEREFORE in exercise of the powers for this purpose given to me by the said indenture, and of all other powers (if any) in anywise enabling me in this behalf, I do by this my last will and testament direct and appoint that all and every the trust moneys by the said indenture directed to be held in trust for me, my children, and remoter issue, and over which I have such power of appoint-

Recite settlement,

whereby a share of moneys arising from sale of freehold and leasehold estates is settled,

in trust for testatrix for life, after her decease in trust for her children as she should appoint by will.

Number of children.

Appointment of trust moneys pursuant to power.

OF A  
MARRIED  
WOMAN.

To husband  
for life.

After his  
decease for  
children of  
testatrix  
and issue of  
children  
dying in her  
lifetime,  
such issue to  
take parent's  
share.

ment as aforesaid, shall from and after my decease remain and be, and that the trustees or trustee for the time being of the same indenture shall stand possessed thereof, UPON TRUST and to the intent that the income thereof may be paid to my said husband — in case he shall survive me, and his assigns during his life, and that from and after his decease, the same trust moneys and premises shall remain and be IN TRUST for all my children living at my decease and such child or children living at my decease of any child or children of mine who may die in my lifetime as being male shall attain the age of twenty-one years, or being female shall attain that age or marry, in equal shares, except that the children of any deceased child of mine who may become entitled to a share of the said trust moneys under this my will shall take between them the share only which his, her, or their parent would have taken if such parent had survived me: AND I APPOINT the said (*trustees of settlement*) to be the executors of this my will.

IN WITNESS, &c.

## No. XX.

WILL of REAL and PERSONAL ESTATE; BEQUEST of  
 SHARES in an ASSURANCE OFFICE to SON attaining  
*twenty-one*; BEQUEST of Pecuniary LEGACIES to  
 CHILDREN attaining *twenty-one*; BEQUESTS of  
 POLICIES of Assurance on life of Wife, and Resi-  
 due of PERSONAL ESTATE to Trustees upon Trust  
 to convert the same except the Policies into Money,  
 and thereout to pay Debts and Legacies, and to  
 INVEST the RESIDUE, and out of income to keep up  
 Policies and pay surplus to WIFE for life; On  
 her decease, RESIDUARY PERSONALTY, including  
 POLICY MONEYS for Children, as WIFE by Deed or  
 Will may appoint; in default of appointment, for  
 CHILDREN equally; DEVISE of REAL ESTATE to use  
 of Trustees for a TERM, remainder to use of WIFE  
 for LIFE, with remainder to CHILDREN as TENANTS  
 in COMMON in fee, with CROSS executory limitations  
 in case of the DEATH of any CHILDREN under  
*twenty-one* and being daughters unmarried; in  
 default of children to WIFE in FEE; TRUSTS of  
 TERM to raise money for DEBTS, &c., in aid of  
 Personality; and out of rents to keep up POLICIES  
 in aid of income of Personality; Usual Powers  
 and Provisions.

DEVISE AND  
 BEQUEST OF  
 POLICY OF  
 ASSURANCE  
 AND OTHER  
 REAL AND  
 PERSONAL  
 ESTATE.

I, A. B., of, &c. (commencement and appointment of executors  
 and trustees, see *supra*, p. 448): I BEQUEATH my ten shares  
 in the — Assurance Office in manner following (namely):  
 To my son G. B. absolutely, but if he shall die in my lifetime,  
 or under the age of twenty-one years, to such son of me as  
 shall first attain the age of twenty-one years: and if no son of  
 me shall attain the age of twenty-one years, then to my wife  
 — absolutely: I BEQUEATH to each of my children who being  
 a son shall attain the age of twenty-one years, or being a  
 daughter shall attain that age or marry, the sum of £2000: I  
 BEQUEATH the two several policies of assurance which I have  
 effected with the — Assurance Company and the — As-

Bequest of  
 shares in  
 assurance  
 office to son  
 attaining  
*twenty-one*.

Bequest of  
 legacies to  
 sons and  
 daughters.

Bequest of  
 policies, and  
 other personal  
 estate.

DEVISE AND  
BEQUEST OF  
POLICY OF  
ASSURANCE  
AND OTHER  
REAL AND  
PERSONAL  
ESTATE.

Upon trust  
to convert  
the same  
into money,  
and there-  
out to pay  
debts and  
legacies,

and to in-  
vest the  
residue.

Out of  
income to  
keep up the  
policies and  
pay surplus  
to wife.

To receive  
policy  
moneys  
when pay-  
able, and  
invest same.

Devise of  
freehold

surance Society respectively for the sum of £5000 each, payable in the event of my said wife dying before her mother, and the moneys thereby respectively assured, and all other my personal estate whatsoever and wheresoever (except leasehold estates hereinafter bequeathed) unto my trustees UPON TRUST that they shall at such time or times as they shall think fit, call in and convert into money the said personal estate (except such part thereof as shall consist of money, and except the said policies), but as to reversionary property not until the same shall fall into possession, and shall, with and out of the moneys to arise from such calling in and conversion, and with and out of my ready money, pay my funeral and testamentary expenses and debts, and the several pecuniary legacies hereby given, or to be given by any codicil or codicils thereto, and shall invest the residue of the said moneys, with power for my trustees with the written consent of my said wife during her life, and after her decease at their own discretion to vary the investments thereof; and shall during the joint lives of my said wife and mother with and out of the income of the said residuary moneys and the stocks, funds, and securities in or upon which the same shall be invested, pay the premiums and other sums of money which shall from time to time become payable for keeping on foot the said policies of assurance, and subject to the trust aforesaid, shall pay the said income, or so much thereof as shall not be required for the purpose aforesaid, unto my said wife during her life: AND IN CASE my said wife shall die in the lifetime of my said mother, so that the moneys assured by the said policies shall become payable, then do and shall receive the said moneys and invest the same, with power with such consent or at such discretion as aforesaid, to vary the investments thereof from time to time: AND I DECLARE that after the decease of my said wife, my trustees shall stand possessed of the aforesaid residue of the moneys to arise from the calling in, and conversion of my personal estate, including the moneys to become payable in the event aforesaid under the said policies, and the stocks, funds, and securities in or upon which the said several moneys shall for the time being be invested (which moneys, stocks, funds, and securities, are hereinafter called the residuary trust funds), IN TRUST for, &c. (*Trust for children, with usual provision for advancement, supra*, pp. 449, 450): I GIVE all my freehold lands, tenements, and hereditaments

unto my trustees, and their heirs, To the use of my trustees, their executors, administrators, and assigns, for the term of five hundred years, without impeachment of waste, to be computed from my decease, and after the determination of the said term and in the meantime subject thereto and to the trusts thereof, To the use of my said wife for her life without impeachment of waste: AND after her decease to the use of all or such one or more of my children, at such ages or times, age or time, in such shares, if more than one, and in such manner as my said wife by any deed or deeds, with or without power of revocation and new appointment, or by her will or any codicil thereto, shall whether sole or married, from time to time appoint: AND IN DEFAULT of and until such appointment, and so far as any such appointment, if incomplete, shall not extend, TO THE USE of all my children living at my decease and their respective heirs and assigns as tenants in common in equal shares: PROVIDED ALWAYS, and I declare that if any one or more of my said children shall die, being a son or sons under the age of twenty-one years, or being a daughter or daughters under that age and unmarried, then as well the original share of every or any child so dying as the share or shares which by virtue of this present clause shall have survived or accrued to him or her, of and in the said freehold hereditaments, shall go over and be to the use of the others or other of my children and their or his heirs and assigns, and if more than one as tenants in common in equal shares: AND I FURTHER DECLARE that if no child of mine being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then after the decease of my said wife, and such failure of my issue as aforesaid, the said freehold hereditaments shall go, remain, and be to the use of my said wife, her heirs, and assigns for ever: AND I DECLARE that the said freehold hereditaments are hereinbefore limited to the use of my trustees, their executors, administrators, and assigns, for the term of five hundred years, UPON TRUST, &c. (*Trust in the first place to pay funeral and testamentary expenses, debts, and legacies, in aid of personalty, and declaration that purchaser or mortgagee need not inquire as to regularity of sale or mortgage, see supra*, pp. 493, 504): AND SHALL in the next place with and out of the rents and profits of the premises comprised in the said term and in aid of the income of my residuary personal

DEVISE AND BEQUEST OF POLICY OF ASSURANCE AND OTHER REAL AND PERSONAL ESTATE.

estates to trustees for five hundred years, to raise the sums charged on the estate.

And subject as aforesaid, devise of same to wife for life.

After her decease to children as wife may appoint.

Subject thereto to children as tenants in common in fee.

Survivorship and accruer clause.

In default of children living to attain a vested interest to wife in fee.

Charge of rents and profits with sums for keeping up policies.

DEVISE AND  
BEQUEST OF  
POLICY OF  
ASSURANCE  
AND OTHER  
REAL AND  
PERSONAL  
ESTATE.

Power to  
lease for  
twenty-one  
years.

Power of  
sale and  
exchange.

estate pay the premiums and other sums of money which shall from time to time become payable for keeping on foot the said policies of assurance, and subject to the trusts aforesaid shall permit the rents and profits of the premises comprised in the said term to be received by the person or persons entitled for the time being to the said premises in reversion immediately expectant on the said term (*Power to manage during minority of children, see supra*, pp. 486, 487, *mutatis mutandis*): AND I EMPOWER my said wife during her life, and after her decease my trustees during the minority of any child of me entitled for the time being under this my will to the said freehold hereditaments or any undivided share thereof, by any deed or deeds to lease (*Power of leasing the real estate for twenty-one years, supra*, p. 487): AND I DECLARE that my trustees shall have a power of sale and exchange over the freehold hereditaments exercisable during the life of my said wife with her consent in writing, and after her decease during the minority of any child entitled under this my will to the said freehold hereditaments or any undivided share thereof at the discretion of my trustees (*Leases and sales during minority to be made with consent of children who are adults, supra*, p. 488): I GIVE AND BEQUEATH all my copyhold and leasehold lands, tenements, and hereditaments unto my trustees, their executors, administrators, and assigns, for all my term, estate, and interest therein respectively, UPON TRUST in the first place with and out of the rents and profits of the said premises to pay, render, observe, and perform the rents, fines, heriots, and services due and of right accustomed in respect of the said copyhold premises, and the rents, covenants, and conditions reserved by and contained in the several leases of the said leasehold premises respectively, and which on the part of the lessee ought to be paid, observed, and performed, and subject thereto UPON such trusts, and with and subject to such powers and provisions as will correspond as nearly as the different tenures will permit, with the uses, trusts, powers, and provisions hereinbefore declared and contained of and concerning the said freehold hereditaments hereinbefore devised: AND I DECLARE that any moneys hereby directed or authorised to be invested may be invested in or upon, &c. (*Clauses as to investments and appointment of new trustees; Devise of trust and mortgage estates, pp. 451 to 453.*)

IN WITNESS, &c.

## No. XXI.

WILL of REAL and PERSONAL ESTATE; BEQUEST of *Annuity, and direction to the EXECUTORS to purchase the same from Government or from a Company; BEQUEST of Testator's Business and the Capital employed therein; and the LEASEHOLD PREMISES where it is carried on, to his SON; BEQUEST of a SUM to Trustees upon Trust to invest the same, and to pay the Income to — for life, with Remainder to SEVERAL PERSONS or their CHILDREN per stirpes; DEVISE and BEQUEST of Residue of REAL and PERSONAL ESTATE to Trustees, upon Trust to pay ANNUITY to each UNMARRIED DAUGHTER and a SUM of Money to each DAUGHTER on MARRIAGE, and subject thereto for SON.*

SPECIFIC  
AND OTHER  
BEQUESTS,  
WITH PRO-  
VISION FOR  
UNMARRIED  
DAUGHTERS.

I, A. B., of, &c. (*commencement and appointment of executors and trustees, see supra, p. 448*): I GIVE AND BEQUEATH an annuity of — to — for her life for her separate use, and so that during her coverture she shall not have power to anticipate the same, and for this purpose I direct my trustees, within twelve calendar months after my decease, to lay out a sufficient portion of my personal estate in the purchase of such an annuity as aforesaid in her name, either from the Commissioners for the Reduction of the National Debt or from any public Company: AND I DECLARE that the said — or any person claiming under her, shall not be entitled to claim or accept in lieu or satisfaction thereof the sum which may be required for the purchase of such annuity: I GIVE AND BEQUEATH the goodwill and benefit of the business of —, which I am now carrying on at —, and also all my capital and property which shall be employed therein at my decease, and also the leasehold premises situate and being No. — at — aforesaid, wherein the said business is now being carried on, for all my term and interest therein, unto my son — absolutely: I BEQUEATH a sum of £— sterling unto my trustees, UPON TRUST that my trustees shall invest the same, with liberty to

Bequest of  
annuity

Bequest of  
business  
and the  
capital  
therein, and  
leasehold  
premises to  
son.



SPECIFIC  
AND OTHER  
BEQUESTS,  
WITH PRO-  
VISION FOR  
UNMARRIED  
DAUGHTERS.

Bequest of  
legacy to  
person for  
life, with  
remainder  
to several  
persons or  
their chil-  
dren *per*  
*stirpes*.

Gift of  
residue.

Trust out of  
income to  
pay annuity  
to each of  
unmarried  
daughters,

and out of  
corpus to  
raise sum  
for each  
daughter  
who may  
marry,  
subject  
thereto for  
son.

vary the investments thereof from time to time, and shall stand possessed of the said sum of £——, and the stocks, funds, and securities in or upon which the same shall for the time being be invested, IN TRUST to pay the income thereof to X. Y. during his life, AND AFTER his decease then IN TRUST for L. M., T. M., S. M., and G. M., or such of them as shall survive me, and such child or children of any of them the said L. M., T. M., S. M., and G. M. who may die before me, as being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, in equal shares, except that the children of any of them the said L. M., T. M., S. M., and G. M. who may die before me shall take between them the share only which their parent would have taken if he had survived me (*Advancement clause, supra, p. 450, mutatis mutandis*): I GIVE, DEVISE, AND BEQUEATH, &c. (*Devise and bequest of residue to trustees, in trust to sell and convert and pay funeral and testamentary expenses, debts, and legacies, and invest proceeds, supra, p. 449*): AND SHALL in the first place, out of the income of the residuary trust funds, pay to each of my daughters who shall for the time being be unmarried the annual sum of £—— by equal half-yearly payments, the first of such payments to be made at the expiration of six calendar months after my decease, and shall in the next place, out of the corpus of the residuary trust funds, raise and pay to each of my daughters who shall be married at my decease, or shall afterwards marry, for her separate use, the sum of £—— sterling, and subject as aforesaid shall stand possessed of the residuary trust funds and the income thereof, IN TRUST for my said son —— (*Clause as to investments; Devise and bequest of trust and mortgage estates; supra, pp. 451, 453.*)

IN WITNESS, &c.

## No. XXII.

OF A SHIP-  
BROKER.

### WILL of a SHIPBROKER, containing SPECIAL PRO- VISIONS with regard to his BUSINESS.

Commence-  
ment of  
will.  
Recites  
articles of  
partnership

I, A. B., of, &c. (*commencement of will and appointment of executors and trustees, see p. 448*): WHEREAS I carry on the business of a shipbroker, at —— aforesaid, in partnership with ——, pursuant to articles of partnership dated the —— day of

—, by which articles it was (among other things) provided that the said partnership should continue for the term of — years from the — day of —, AND it was also provided that if I should die during the continuance of the said partnership, the amount of capital belonging to me should remain in the said partnership for the remainder of the term of ten years, at interest at the rate of £5 per cent. per annum, and that the surviving partners or partner should during the residue of the said term pay to my widow a sum equal to one-half part of the annual profits of the said partnership, AND it was also provided that in the event of my death, before introducing a son into the partnership, my widow should be entitled to introduce one of my sons into the said partnership, and in such case he should be entitled to one-tenth share of the said partnership business, of which he should receive one-twentieth from my widow and one-twentieth from the said —: NOW I HEREBY AUTHORISE AND EMPOWER my trustees to make such arrangements as may seem to them desirable for carrying into effect the provisions of the said articles of partnership so far as the same shall be in force at my decease, with liberty to determine in such manner as may be advised by counsel or otherwise, any question which may arise as to the construction of the said articles or otherwise in relation thereto: AND I ALSO AUTHORISE AND EMPOWER my trustees, if they shall think fit so to do, to vary the provisions of the said articles of partnership in such manner as may be agreed on between my trustees and my surviving partners or partner, but so that no such variation shall be made as will affect my widow without her consent, AND (subject to the provisions of the said articles of partnership, if and so long as the same shall remain in force) I AUTHORISE AND EMPOWER my trustees to continue the said business for such period after my decease as they may think fit, with liberty to carry on the same either alone or in partnership with the persons or person (if any) who shall be my partners or partner at my decease or with any other person or persons, and upon such terms as to division of profits and otherwise as may be agreed on, and with liberty also to employ in the said business the whole or any part of my capital which shall be employed therein at my decease, and also such further part (if any) of my estate and effects as to my trustees shall seem proper, and with liberty also to employ such managers, agents, and clerks in or about the

OF A SHIP-  
BROKER.

Power to  
trustees to  
make  
arrange-  
ments for  
carrying  
into effect  
articles of  
partnership,

and to vary  
articles.

Power to  
trustees to  
continue  
business.

OF A SHIP-  
BROKER.

Power to  
make  
arrange-  
ments for  
introduc-  
tion of son  
into  
business,

and to  
advance  
capital to  
son so  
introduced.

Power to  
leave  
manage-  
ment of  
business to  
partners,

or to co-  
trustee.

said business, and to allow to them such salaries and wages as my trustees shall think fit: AND my trustees shall have the fullest powers and discretions as to the mode of conducting the said business and otherwise in relation thereto as if they were the absolute owners thereof: AND I ALSO AUTHORISE AND EMPOWER my trustees (subject as aforesaid) to make such arrangements as may seem to them desirable for the introduction at any time or times into the said business of any one or more of my sons whom my trustees shall think fit to introduce into the said business, and for the employment of such son or sons in the said business in the meantime as a manager or clerk or in any other capacity at such salary or wages and upon such terms as my trustees shall think fit: AND I FURTHER AUTHORISE AND EMPOWER my trustees at their discretion, to advance and lend to any son or sons of mine who shall be introduced into the said business as aforesaid either alone or jointly with his or their partners or partner (if any) or to continue in the possession or order the control of such son or sons either alone or jointly as aforesaid, the whole or any part of my estate and effects for the time being employed in such business, and also if my trustees shall think fit any further part of my estate and effects for such time and upon such terms and conditions, and either with or without security, as my trustees shall think fit: AND I DECLARE that the capital so advanced or lent to or left in the possession or under the control of such son or sons either alone or jointly as aforesaid shall be considered as a debt to my estate, and shall bear interest after the rate of £5 per cent. per annum, but any son or sons of mine introduced into the said business as aforesaid shall not pay anything to my estate for the goodwill of the said business: PROVIDED ALWAYS AND I FURTHER DECLARE, that my trustees may (if they think fit) leave the entire management of the said business while so continued as aforesaid to the other partner or partners (if any), or if there shall be no such partner, then to a manager or managers to be appointed for that purpose by my trustees, and my trustees shall be under no obligation to attend personally to the said business or be in anywise responsible for any loss which may arise by their omission to attend personally to the said business or to interfere therein: AND ALSO, that if one or more of my trustees for the time being shall be unwilling to engage in and continue such business as aforesaid, he or they may allow

his or their co-trustee or co-trustees to engage in and continue the same and to act alone in relation to the trusts of this my will so far as regards such business: AND I ALSO DECLARE that my trustees for the time being carrying on the said business shall be entitled to retain and divide between themselves for their own use the annual sum of £ — out of the profits of the said business as a remuneration for their trouble: AND (subject to the said articles of partnership) I AUTHORISE AND EMPOWER my trustees to discontinue and wind up the said business so far as regards my estate either immediately after my decease or at such other time or times as they shall think fit, and to make such arrangements in relation thereto as they may deem proper, and in particular my trustees may leave to any partner, agent, or other person the collection of any outstanding debts, and may give such time as my trustees shall think fit for payment by any partner or partners of the sum which under any such arrangement as aforesaid shall become payable by him or them to my estate, and either with or without security, and may appoint or concur in appointing such accountants, valuers, and other persons as may be deemed proper for taking the accounts of the said partnership and for valuing any matters which may be capable of valuation, and may settle and adjust accounts, may refer to arbitration, or otherwise compromise and settle any questions and differences, and generally shall have the fullest powers and discretion in relation to the winding up of the said business so as if they were the absolute owners or owner thereof. (*Then follows the disposition of the testator's general estate.*)

OF A SHIP-  
BROKER.

Trustees to  
be entitled  
to allowance  
for carrying  
on business.

Power to  
wind up  
business.

IN WITNESS, &c.

### No. XXIII.

WILL by a TENANT FOR LIFE in REMAINDER of SETTLED ESTATES, in exercise of POWERS of JOINTURE and CHARGING with PORTIONS for YOUNGER CHILDREN, subject to the PRIOR LIMITATIONS contained in the WILL creating the powers.

WILL IN  
EXERCISE OF  
POWERS OF  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS.

THIS IS THE LAST WILL AND TESTAMENT of me, A. B., of, &c.: WHEREAS my late father, X. B., Esq., deceased, by his will dated, &c. (*Recite will of testator's father devising freehold estates to his eldest son Y. B. for life, with remainder to*

Commence-  
ment.  
Recite will  
of testator's  
father, and  
that  
testator

WILL IN  
EXERCISE OF  
POWERS TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS.

has several  
children.

1. Testator  
in exercise  
of power  
appoints a  
jointure to  
his wife.

Power of  
distress and  
entry.

2. Testator  
in exercise  
of power,  
charges  
settled  
estates with  
portions.

*Y. B.'s first and other sons in tail male with remainder to his second son (the present testator) for life, with remainder to his first and other sons in tail male, with divers remainders over. Power to each tenant for life to jointure and charge with portions and maintenance for younger children in the usual form):* AND WHEREAS my elder brother Y. B. is living, but he has no issue: AND WHEREAS I have several children by C. B. my wife, all of whom are infants: AND WHEREAS I am desirous of exercising the several powers of jointuring my wife and of charging with portions and maintenance for my younger children given to me by my father's said will as aforesaid in the manner hereinafter expressed, and I am also desirous of disposing of my own estate and effects in the manner hereinafter expressed: NOW I HEREBY REVOKE all former wills and testamentary appointments and dispositions made by me, and declare as follows:—

1. IN exercise and execution of the power for this purpose given to me by my father's said will as aforesaid, and of all other powers (if any) me hereunto enabling, I HEREBY APPOINT unto my said wife a yearly rent-charge of £500 to be charged upon and payable out of all and singular the hereditaments devised in strict settlement by my father's said will aforesaid, and to commence from my decease or from the decease and failure of issue male of the said Y. B. (which shall last happen), the said yearly rent-charge to be paid by equal quarterly payments, the first of such payments to be made on the expiration of three calendar months after the time hereby appointed for the commencement of the said rent-charge, and that if the said rent-charge, &c. (*Powers of distress and entry, supra*, p. 486).

2. IN exercise and execution of the power for this purpose given to me by my father's said will as aforesaid, and of all other powers (if any) me hereunto enabling, I HEREBY CHARGE all and singular the hereditaments devised in strict settlement by my father's said will with the sum of £15,000 for the portions of such of my younger children as being sons shall attain the age of twenty-one years, or being daughters shall attain that age or marry in equal shares. And for this purpose the expression "younger children" shall be construed to mean and include every daughter of mine, and also every son not being at his birth or becoming during his minority an eldest or only son entitled to the said hereditaments for an estate tail in

possession or in remainder immediately expectant on some estate prior in order of limitation to my life estate: AND I DECLARE that if any son of mine being an eldest or only son, when he attains the age of twenty-one years, shall afterwards die before his estate tail under my father's said will falls into possession, and without having disentailed the said hereditaments or any part thereof, with the consent of the said Y. B. as the protector of the settlement, such son shall also be deemed a younger son for the purpose of this charge (a)]: PROVIDED ALWAYS that if only one younger child of mine being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, such child shall have the sum of £5000 only for his or her portion, and if two younger children of mine and no more being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, such two children shall have between them the sum of £8000 only for their portions, and if three younger children of mine and no more being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, such three children shall have between them the sum of £12,000 and no more for their portions, AND in either of the aforesaid cases the said sum of £15,000 shall be reduced to an amount sufficient to provide the said sum of £5000, £8000, or £12,000 as the case may be required for such portion or portions, together with such sum or sums of money (if any) as may be applied for the benefit of a son or sons who shall not live to attain a portion or portions under the power of advancement hereinafter contained, and the difference between the said sum of £15,000, and such reduced amount shall sink into the said hereditaments and cease to be charged thereon.

WILL IN  
EXERCISE OF  
POWERS TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS.

3. IN exercise of the power for this purpose given to me by my father's said will as aforesaid, and of all other powers (if any) me hereunto enabling, I HEREBY APPOINT that (subject and without prejudice to the uses and estates preceding my estate for life under my father's said will and to the powers annexed to such preceding uses and estates, and to the uses and estates limited in exercise of such powers, and subject and without prejudice also to the yearly rent-charge hereinbefore limited to my said wife and to the said powers and remedies for enforcing

3. Testator  
limits  
settled  
estates to  
trustees for  
a term of  
500 years.

(a) See Notes at pp. 303, 331, *supra*.

WILL IN  
EXERCISE OF  
POWERS TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS.

Upon trust  
to secure  
rent-charge.

Further  
trust to  
raise money  
for portions  
of younger  
children.

Advance-  
ment  
clause.

Further  
trust to

payment thereof) all and singular the hereditaments devised in strict settlement by my father's said will shall go, remain, and be To THE USE of C. D., of, &c., and E. F., of, &c., their executors, administrators, and assigns, for the term of five hundred years, computed from my decease, without impeachment of waste, UPON THE TRUST following (that is to say), UPON TRUST that if the said yearly rent-charge of £500 hereinbefore limited to my said wife for her jointure, or any part thereof, shall at any time or times be in arrear and unpaid for the space of sixty days next after any day hereby appointed for payment thereof, then and so often as the same shall happen the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor (hereinafter called "the trustees or trustee of the said term"), shall, by and out of the rents and profits of the said hereditaments or by mortgage or demise thereof or any part thereof, for all or any part of the said term, or by any other reasonable ways or means, raise and pay to my said wife and her assigns the said yearly rent-charge and all arrears thereof, and all costs, charges, and expenses which my said wife or her assigns, or the trustees or trustee of the said term shall sustain by reason of the non-payment thereof: AND UPON FURTHER TRUST that the trustees or trustee of the said term shall (subject to the trusts hereinbefore declared for securing the payment of the said yearly rent-charge), by mortgage, or other disposition of the said hereditaments, or any part thereof, for all or any part of the said term, or by and out of the rents and profits thereof, or by any other reasonable ways or means, levy and raise such sum of money as under the foregoing charge in that behalf shall become payable for a portion or portions as aforesaid, at the time or respective times when the same shall so become payable, and shall pay and apply the moneys to be so raised accordingly: PROVIDED ALWAYS, that it shall be lawful for the trustees or trustee of the said term, at any time or times after my decease, or the decease and failure of issue male of the said Y. B. (which shall last happen), at the discretion of the said trustees or trustee, to raise by the ways and means aforesaid, or any of them, any part or parts not exceeding together the moiety of the vested or expectant portion of any child under the foregoing charge, and to apply the same for the advancement, preferment, or benefit of such child, in such manner as the said trustees or trustee shall think fit: AND UPON FURTHER

TRUST that in case at my decease or at the decease and failure of issue male of the said Y. B. (which shall last happen), any child of mine entitled for the time being in expectancy to a portion under the trust aforesaid, shall be under the age of twenty-one years then and in such case the trustees or trustee of the said term shall thenceforth during the minority of each such child by some or one of the ways and means aforesaid, levy and raise such annual sum as the said trustees or trustee shall think fit, not exceeding interest after the rate of £4 per cent. per annum on the amount of his or her expectant portion under the trusts aforesaid, and shall apply the same annual sum for or towards the maintenance and education of such child, in such manner as the said trustees or trustee shall think fit, with liberty for the trustees or trustee to pay the same annual sum to the guardian or any of the guardians of such child for the purpose aforesaid, without being liable to see to the application thereof: AND UPON FURTHER TRUST that the said trustees or trustee do and shall by some or one of the ways and means aforesaid, levy and raise such sum or sums of money as shall be sufficient for payment of the costs and expenses incurred by them or him in or about the execution of the trusts of the said term, and do and shall pay and apply the moneys to be so raised in payment of such costs and expenses accordingly: AND (subject to the trusts hereinbefore declared, do and shall permit the rents and profits of the said hereditaments, or so much thereof as shall not be required for any of the purposes aforesaid, to be received by the person or persons entitled for the time being to the said hereditaments in reversion or remainder immediately expectant on the said term.

WILL IN  
EXERCISE OF  
POWERS TO  
JOINTURE  
AND CHARGE  
WITH  
PORTIONS.

raise annual  
sum for  
mainte-  
nance of  
children  
entitled to  
expectant  
portions.

Further  
trust to  
raise costs  
and ex-  
penses

and to pay  
surplus  
rents to  
reversioner.

4. I BEQUEATH the following legacies (that is to say) (*Bequest of legacies*).

4. Bequest  
of legacies.

5. I GIVE, DEVISE, AND BEQUEATH all the rest, residue, and remainder of my property, whether real or personal (including estates vested in me as a trustee or mortgagee), unto my said wife absolutely.

5. Bequest  
of residue  
to wife.

6. I APPOINT my said wife and the said C. D. and E. F. executrix and executors of this my will: AND I APPOINT my said wife during her life, and after her decease the said C. D. and E. F. and the survivor of them, the guardian and guardians of my infant children.

6. Appoint-  
ment of  
executors  
and guar-  
dians.

IN WITNESS, &c.



## No. XXIV.

CODICIL  
APPOINTING  
NEW  
TRUSTEE IN  
PLACE OF  
DECEASED  
TRUSTEE.

CODICIL *appointing a TRUSTEE and EXECUTOR in the place of a DECEASED TRUSTEE and EXECUTOR appointed by the TESTATOR'S WILL.*

THIS IS A CODICIL TO THE LAST WILL AND TESTAMENT of me A. B., of, &c., which will bears date the — day of — : WHEREAS by my said will I have appointed C. D. to be one of the trustees and executors thereof [and also one of the guardians of my infant children after the decease of my wife]: AND WHEREAS the said C. D. has lately died : Now I hereby appoint E. F. of, &c., to be one of the trustees and executors of my said will [and also to be one of the guardians of my infant children after the decease of my said wife], in the place of the said C. D., deceased : AND I GIVE to the said E. F. a legacy of £— for his trouble in acting as an executor and trustee of my said will ; and I declare that my said will shall be construed and take effect as if the name of the said E. F. were inserted in my said will throughout instead of the name of the said C. D., AND IN ALL OTHER respects I confirm my said will.

IN WITNESS, &c.

## No. XXV.

CODICIL  
REVOKING  
APPOINT-  
MENT OF  
TRUSTEE  
AND  
APPOINTING  
NEW ONE.

CODICIL *revoking the Appointment of ONE of the TRUSTEES and EXECUTORS, and appointing a NEW ONE in his place.*

THIS IS A CODICIL, &c. (*see supra*): WHEREAS by my said will I have appointed C. D. to be one of the trustees and executors thereof [and also one of the guardians of my infant children after the decease of my wife], and I have given him a legacy of £— for his trouble in acting as such trustee and executor : Now I HEREBY REVOKE the appointment of the said C. D. as such trustee and executor [and guardian], and also the said legacy of £— given to him as aforesaid, AND I APPOINT E. F. of, &c., to be a trustee and executor of my said will [and also to be a guardian of my infant children after the decease of my said wife], in the place of the said C. D., and I give to the

said E. F. a legacy of £—— for his trouble in acting as such trustee and executor: AND I DECLARE that my said will shall be construed and take effect as if the name of the said E. F. were inserted in my said will throughout instead of the name of the said C. D.: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

CODICIL  
REVOKING  
APPOINT-  
MENT OF  
TRUSTEE  
AND  
APPOINTING  
NEW ONE.

### No. XXVI.

#### CODICIL *appointing an* ADDITIONAL TRUSTEE *and* EXECUTOR.

CODICIL  
APPOINTING  
ADDITIONAL  
TRUSTEE.

THIS IS A CODICIL, &c. (*see supra*): WHEREAS by my said will I have appointed C. D. of, &c., and E. F. of, &c., to be the trustees and executors of my said will [and also to be the guardians of my infant children after the decease of my wife]: NOW I HEREBY APPOINT G. H. of, &c., to be an additional trustee and executor of my said will [and to be an additional guardian of my infant children after the decease of my said wife], and I declare that my said will shall be read and construed as if the names of the said C. D., E. F., and G. H., were inserted therein instead of the names of the said C. D. and E. F., and that all the trusts and powers in and by my said will reposed in and made exercisable by the said C. D. and E. F., or the survivor of them, or the heirs, executors, or administrators of such survivor, shall be exercisable by the said C. D., E. F., and G. H., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

### No. XXVII.

#### CODICIL *directing that a SUM paid to one of the* *Testator's CHILDREN in his life shall be taken in* *part* SATISFACTION *of his SHARE under Will.*

CODICIL,  
WITH  
DIRECTION  
AS TO MONEY  
ADVANCED  
TO SON.

THIS IS A CODICIL, &c. (*see supra*): WHEREAS by my said will, I have directed that the residue of the moneys to arise from the sale and conversion of my real and personal

Recital of  
will.

CODICIL  
WITH  
DIRECTION  
AS TO MONEY  
ADVANCED  
TO SON.

That testa-  
tor has paid  
money for  
son.

Declaration  
that money  
so paid shall  
be taken  
in part  
satisfaction  
of son's  
share.

estate shall be divided equally between my children, who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry: AND WHEREAS since the making of my said will I have paid the sum of £—— to or for the benefit of my son G. B.: Now I HEREBY DECLARE that the said sum of £——, so as aforesaid paid to or for the benefit of my said son G. B., shall be taken by him in part satisfaction of his share under my said will, and accordingly that the residue of the moneys to arise from the sale of my real and personal estate, shall be divided between the children among whom the same is directed to be divided by my said will, in such manner that the share of the said G. B. shall be less in amount than the shares of the other children by the sum of £——: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

#### No. XXVIII.

CODICIL  
GIVING  
POWER TO  
TRUSTEES TO  
PURCHASE  
GOVERN-  
MENT  
ANNUITIES.

CODICIL *giving a POWER to TRUSTEES to purchase GOVERNMENT ANNUITIES, or to INVEST FUNDS to meet ANNUITIES bequeathed by Will, and thereupon DISCHARGING property which by the Will was charged with the same.*

Recital  
of will  
giving  
estate to  
C. D.  
charged  
with said  
annuities.

Declaration  
that if  
devisee pur-  
chases a  
government  
annuity of  
like amount  
or sets apart  
funds to  
meet any  
annuity,  
then annui-  
tant shall  
accept same  
and dis-  
charge  
estate.

THIS IS A CODICIL, &c., WHEREAS I have by my said will bequeathed the following annuities, namely —— (*state particulars of annuities*), and have charged the same on my freehold estates in —— which estates so charged as aforesaid are by my said will devised and bequeathed (with the residue of my real and personal estate) to C. D., his heirs, executors, administrators, and assigns: NOW I HEREBY DECLARE, with respect to each and every of the said several annuities bequeathed by my said will, that if the said C. D., his heirs, executors, administrators, or assigns, shall at any time during the life of the annuitant to whom each or any of the said annuities is bequeathed as aforesaid, purchase in his name, or in the name or names of his nominee or nominees, a government annuity for the life of such annuitant equal in amount to the annuity bequeathed to him

as aforesaid, and so that the first half-yearly payment of the said government annuity shall become due on a day not being later than the day on which the next half-yearly payment of the annuity for which the same shall be substituted would have become due if such purchase had not been made, or if the said C. D., his heirs, executors, administrators, or assigns, shall at any time during the life of each or any such annuitant as aforesaid, transfer or cause to be transferred into the names or name of the trustees or trustee for the time being of my said will, stocks, funds, shares, or securities of the nature authorised as investments by my said will, of such an amount or value that the annual interest, dividends, or income thereof shall at the time of such investments be sufficient to pay the annuity bequeathed to such annuitant as aforesaid, to the intent that the said trustees or trustee shall stand possessed of the said stocks, funds, shares, and securities, UPON TRUST out of the interest, dividends, and income thereof, or if the same shall be insufficient, then out of the corpus thereof to pay the same annuity at the times at which the same is made payable by my said will, then, and in every or any such case as aforesaid, the annuitant for whom any such government annuity shall be purchased, or whose annuity shall be so secured as aforesaid (as the case may be), shall accept such government annuity, or the annuity to be so secured as aforesaid (as the case may be), in lieu and satisfaction of the annuity charged on the said premises in — as aforesaid, and the said premises shall thenceforth be absolutely freed and discharged from the same annuity and from all claims and demands in respect thereof: AND I FURTHER DECLARE that in case and so often as any government annuity shall be purchased as aforesaid, the annuitant for whom the same shall be so purchased shall for the greater satisfaction of the said C. D., his heirs, executors, administrators, or assigns, execute such deed or deeds (if any) as he or they may require for evidencing the release of the said premises from the same annuity, such deed to be prepared and executed at the expense of the party requiring the same: AND I ALSO DECLARE that if any or either of the said annuities shall be secured by the transfer of stocks, funds, shares, or securities, into the names or name of the trustees or trustee of my said will as aforesaid, a statement in writing signed by the trustees or trustee that stocks, funds, shares, or securities of the required amount or

CODICIL  
GIVING  
POWER TO  
TRUSTEES TO  
PURCHASE  
GOVERN-  
MENT  
ANNUITIES.

Annuitant  
shall if  
requested  
execute  
release.

Statement  
of trustees  
to be con-  
clusive  
evidence  
that funds  
have been  
set apart  
to meet  
annuity.

CODICIL  
GIVING  
POWER TO  
TRUSTEES TO  
PURCHASE  
GOVERN-  
MENT  
ANNUITIES.

---

value have been transferred into their or his names or name upon the trust aforesaid shall be sufficient and conclusive evidence of the fact so stated: AND IN ALL OTHER RESPECTS I confirm my said will.

IN WITNESS, &c.

## DISCLAIMERS.

### No. I.

DISCLAIMER *of the Trusts and Executorship of a*  
 WILL *by* ONE *of several* TRUSTEES *and* EXECUTORS (a).

BY ONE OF  
SEVERAL  
TRUSTEES  
AND  
EXECUTORS  
OF A WILL.

TO ALL TO WHOM these presents shall come, A. B., of, &c. (*disclaiming party*), sends greeting: WHEREAS G. H., late of, &c., Esq., deceased, duly made his will, dated the — day of —, and thereby gave, devised, and bequeathed all his real and personal estate unto the said A. B. and C. D. of, &c., their heirs, executors, administrators, and assigns, upon the trusts and with and subject to the powers and provisions therein declared and contained concerning the same respectively, and the said testator appointed the said A. B. and C. D. executors of his said will: AND WHEREAS the said testator died on the — day of —, without having revoked or altered his said will: AND WHEREAS the said A. B. has never acted, and has refused to act as a trustee or executor of the said will: NOW THESE PRESENTS WITNESS that he the said A. B. hath from the decease of the said G. H. absolutely disclaimed and renounced, and by these presents doth absolutely disclaim and renounce ALL the real and personal estate and effects whatsoever given, devised, or bequeathed by the said recited will, and also the respective offices of trustee and executor of the said will, and all trusts, powers, and authorities whatsoever by the said will expressed to be reposed in or given to them the said A. B. and C. D., their heirs, executors, administrators, and assigns, and all rights and privileges belonging or annexed to the same, or in anywise relating thereto (b).

Recite will  
and appoint-  
ment of  
executors.

Death of  
testator and  
probate of  
will;

that trustee  
has never  
acted.

Disclaimer  
by trustee  
of trusts  
and execu-  
torship of  
will.

IN WITNESS, &c.

(a) Under 33 & 34 Vict. c. 97, a disclaimer deed not being expressly mentioned in the schedule thereto, is liable to a 10s. stamp duty.

(b) The trustee should simply disclaim, and not profess to convey the property limited to him in trust. See *Nicloson v. Wordsworth*, 2 Swanst. 365.

## No. II.

BY BOTH THE  
EXECUTORS  
AND  
TRUSTEES OF  
A WILL.

DISCLAIMER *of the Trusts and Executorship of a*  
WILL by BOTH *the TRUSTEES and EXECUTORS.*

That trust-  
tees had  
never acted.

Disclaimer  
by trustees  
of trusts and  
executor-  
ship.

Except  
power to  
appoint new  
trustees.

TO ALL TO WHOM these presents shall come, A. B. of, &c., and C. D. of, &c. (*disclaiming parties*), send greeting : WHEREAS G. H., late of, &c., Esq., deceased, duly made his will dated, &c., and thereby gave, devised, and bequeathed all his real and personal estate unto the said A. B. and C. D., their heirs, executors, administrators, and assigns, upon the trusts and with and subject to the powers and provisions therein declared and contained concerning the same respectively: AND the said testator declared that if the trustees therein named, or any of them, should die, or go to reside abroad, or desire to retire from, or refuse or become incapable to act in the trusts of the said will, it should be lawful for the trustees or trustee then continuing to act in the said trusts, or if there should be no such continuing trustee, then for the refusing or retiring trustees or trustee, or the executors or administrators of the last acting trustee, to appoint a new trustee or new trustees as therein mentioned (*Recite death of testator*): AND WHEREAS the said A. B. and C. D. have never acted and have refused to act as trustees or executors of the said will: NOW THESE PRESENTS WITNESS that they the said A. B. and C. D. have from the decease of the said G. H. absolutely disclaimed and renounced, and by these presents do absolutely disclaim and renounce, &c. (*see supra*, No. I., *to the end, adding the following words*), save and except the said power in and by the said will given to the refusing trustees thereof to appoint new trustees in their respective places, which power it is the intention of the said A. B. and C. D. to retain, if and so far as they can retain the same consistently with the disclaimer hereinbefore made or declared.

IN WITNESS, &c.

## No. III.

OF THE  
TRUSTS OF  
A SETTLE-  
MENT.

DISCLAIMER *of the Trusts of a SETTLEMENT.*

Recite  
settlement

TO ALL PERSONS TO WHOM these presents shall come, A. B. of, &c. (*the disclaiming party*), sends greeting : WHEREAS

by an indenture, dated the —— day of ——, and expressed to be made between (*parties*), in consideration of a marriage then intended and since solemnised between the said C. D. and E. F., certain messuages and hereditaments therein described were expressed to be granted or otherwise assured by the said C. D. unto and to the use of the said A. B. and G. H. of, &c., their heirs and assigns for ever, upon the trusts therein declared concerning the same: AND WHEREAS the said A. B. hath not executed the said indenture, nor accepted the estate thereby expressed to be conveyed to him, nor in any manner acted as a trustee thereof: NOW THESE PRESENTS WITNESS that he the said A. B. hath absolutely disclaimed and renounced, and by these presents doth absolutely disclaim and renounce, ALL AND SINGULAR the messuages, lands, hereditaments and premises by the said indenture granted or otherwise assured, or expressed so to be, and all estate, right, title, and interest therein or thereto, and all trusts, powers, and authorities whatsoever by the said indenture expressed to be reposed in or given to them the said A. B. and G. H., and all rights and privileges belonging or annexed to the same, or in anywise relating thereto.

OF THE  
TRUSTS OF  
A SETTLE-  
MENT.

appointing  
disclaiming  
trustee one  
of the  
trustees.

Disclaimer  
by trustee.

IN WITNESS, &c.



## APPOINTMENTS OF NEW TRUSTEES <sup>(a)</sup>.

### No. I.

OF SETTLE-  
MENT IN THE  
PLACE OF  
DECEASED  
AND  
RETIRING  
TRUSTEES.

APPOINTMENT of *two new* TRUSTEES of a SETTLE-  
MENT of *Personalty in the place of a* DECEASED  
TRUSTEE and of a RETIRING TRUSTEE *respectively* ;  
DECLARATION of TRUST of STOCK and MONEY  
INVESTED ON MORTGAGE of *real Estate and RAIL-*  
WAY DEBENTURES.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN  
A. B. of, &c., and C. his wife (*settlor and wife*), of the  
first part, G. H. of, &c. (*retiring trustee*), of the second  
part, E. F. of, &c. (*continuing trustee*), of the third part,  
and L. M. of, &c. and N. O. of, &c. (*new trustees*), of the  
fourth part: WHEREAS by an indenture dated, &c., and made  
between the said A. B., of the first part, the said C. B. (then  
C. D., spinster), of the second part, and the said E. F. and G. H.  
and I. K. of, &c., of the third part (being a settlement made in  
contemplation of the marriage between the said A. B. and C.  
his wife), it was agreed and declared that the said E. F., G. H.,  
and I. K., should stand possessed of the sum of £5000 Consoli-  
dated £3 per Cent. Annuities, which had been transferred into  
their names in the books of the Governor and Company of  
the Bank of England as therein is mentioned, and the divi-  
dends and annual produce thereof, upon the trusts, and with  
and subject to the powers and provisions therein declared and

Recite  
settlement of  
Consols.

(a) By the Stamp Act now in force, 33 & 34 Vict. c. 97, an appointment of a new trustee is made liable to a stamp duty of 10s. And sect. 78 provides that every instrument and every decree or order of any court or of any commissioners, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person, is chargeable with duty as a conveyance or transfer of property, subject to a proviso that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with any higher duty than 10s.

contained concerning the same : AND by the said indenture it was provided that if, &c. (*Recite fully the power to appoint new trustees*) : AND WHEREAS in the year 18—, the said E. F., G. H., and I. K., by the direction of the said A. B. and C. his wife, and pursuant to a power in that behalf contained in the said indenture of settlement, sold the sum of £4000 Consolidated £3 per Cent. Annuities (part of the said sum of £5000 like Annuities), and invested the net proceeds of the said sale, amounting to the sum of £3820, in manner following (that is to say), the sum of £2000, part thereof, on mortgage of certain hereditaments, situate, &c., and which mortgage was affected by an indenture, dated, &c., and made between (*parties*), and the sum of £1820, residue thereof, in the purchase of £1600 preference stock of the ——— Railway Company : AND WHEREAS the said I. K. died on the ——— day of ——— : AND WHEREAS the said G. H. is desirous of being discharged from the trusts of the said indenture of settlement as he doth hereby declare : AND WHEREAS the said A. B. and C. his wife are desirous of appointing the said L. M. and N. O. to be trustees of the said indenture of settlement in the place of the said I. K. deceased, and G. H. respectively : AND WHEREAS it is intended that the sum of £1000 Consolidated £3 per Cent. Annuities (residue of the said sum of £5000 like Annuities) shall be transferred into the names of the said E. F., L. M., and N. O., in the books of the Governor and Company of the Bank of England, and that the said mortgage debt of £2000 and the security for the same, and also the £1600 preference stock of the ——— Railway Company shall be respectively transferred to the said E. F., L. M., and N. O., by deeds already prepared for that purpose, as soon as conveniently can be after the execution of these presents (*b*) ; NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. his wife, in exercise of the power for this purpose given to or vested in them by the said indenture of settlement, and of all other powers (if any) them hereunto enabling, do hereby appoint the said L. M. and N. O. to be trustees of the said indenture of settlement in the place of the said I. K. deceased, and G. H. respectively, and the said L. M. and N. O. hereby consent to be trustees of the said indenture accordingly : AND IT IS HEREBY AGREED AND DECLARED, that the said E. F.,

OF SETTLEMENT IN THE PLACE OF DECEASED AND RETIRING TRUSTEES.

Sale of part of Consols, and investment of proceeds partly on mortgage and partly in purchase of railway shares.

Death of one trustee.

That another trustee desires to be discharged.

That settlor and wife desire to appoint new trustees.

That it is intended to transfer trust funds.

Appointment of new trustees.

Declaration that new

(*b*) For the proper form of a transfer of mortgage on a change of one of several trustees, see Vol. I., "Mortgages."

OF SETTLEMENT IN THE PLACE OF DECEASED AND RETIRING TRUSTEES.

trustees shall hold trust moneys on trusts of settlement.

L. M., and N. O., their executors, administrators, and assigns, shall henceforth stand and be possessed of and interested in the said sum of £1000 Consolidated £3 per Cent. Annuities, the said sum of £2000 invested upon mortgage security, and the said £1600 preference stock of the said — Railway Company, and the dividends, interest, and annual produce thereof respectively, UPON the trusts, and with and subject to the powers and provisions in and by the said indenture of settlement expressed, declared, and contained of and concerning the same, or such of them as are now subsisting and capable of taking effect.

IN WITNESS, &c.

## No. II.

### APPOINTMENT of a new TRUSTEE of a SETTLEMENT in the place of a DECEASED TRUSTEE (by indorsement on the Settlement).

OF SETTLEMENT BY INDORSEMENT.

Parties.

That marriage took effect.

Death of trustee.

Witnessing part.  
Appointment of new trustee.

Declaration of trust.

THIS INDENTURE, made the — day of —, BETWEEN the within-named A. B. and C. D., now C. B., the wife of the said A. B. (*settlor and wife*), of the first part, the within-named G. H. and I. K. (*surviving trustees*), of the second part, and L. M. of, &c. (*new trustee*), of the third part: WHEREAS the marriage between the said A. B. and C. his wife was solemnised shortly after the execution of the within-written indenture: AND WHEREAS the within-named E. F. died on the — day of —, 18—: AND WHEREAS the said A. B. and C. his wife are desirous of appointing the said L. M. to be a trustee of the within-written indenture in the place of the said E. F. deceased: AND WHEREAS it is intended that the within-mentioned sum of £— Consolidated £3 per Cent. Annuities shall be transferred into the joint names of the said G. H., I. K., and L. M., as soon as conveniently can be after the execution of these presents: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. his wife, in exercise of the power for this purpose given to or vested in them by the within-written indenture, and of all other powers (if any) them hereunto enabling, do hereby appoint the said L. M. to be a trustee of the within-written indenture in the place of the said E. F. deceased, and the said L. M. hereby consents to be such trustee. AND IT IS AGREED AND DECLARED that the said G. H., I. K.,

and L. M., their executors, administrators, and assigns, shall stand possessed of the said sum of £—— Consolidated £3 per Cent. Annuities and the dividends thereof, UPON the trusts, and with and subject to the powers and provisions by and in the within-written indenture declared and contained concerning the same, or such of them as are now subsisting and capable of taking effect.

IN WITNESS, &c.

OF SETTLE-  
MENT BY  
INDORSE-  
MENT.

### No. III.

APPOINTMENT of a NEW TRUSTEE of a STRICT SETTLEMENT of FREEHOLD and LEASEHOLD property in the place of one desiring to be discharged (a); CONVEYANCE of FREEHOLDS, to use of continuing and new Trustees, and ASSIGNMENT of LEASEHOLDS to them.

OF A STRICT  
SETTLEMENT  
IN THE  
PLACE OF  
RETIRING  
TRUSTEE.

THIS INDENTURE, made the —— day of ——, BETWEEN Parties.  
A. B. of, &c., and C. his wife (*appointors*), of the first part, E. F. of, &c. (*retiring trustee*), of the second part, G. H. of, &c. (*continuing trustee*), of the third part, and L. M. of, &c. (*new trustee*), of the fourth part: WHEREAS, by an indenture of release, dated the —— day of ——, grounded on a lease for a year, and made between, &c. (*parties*) (being a settlement made in contemplation of the marriage between the said A. B. and C. his wife), certain messuages, farms, lands, and hereditaments, situate in, &c., in the said indenture of release more particularly described (being of freehold tenure), with their appurtenances, were conveyed and assured unto the said E. F. and G. H., and their heirs, To the uses, upon the trusts, and with and subject to the powers and provisions by and in the said indenture limited, declared, and contained, of and concerning the same, and in part hereinafter mentioned (that is to say), from and after the solemnisation of the said then intended marriage, To the use of the said A. B. and his assigns

Recite  
settlement.

(a) Formerly it was necessary, on a change of one of several trustees of leasehold property, to have two deeds, *viz.*,—1st, an assignment by the old trustees to a provisional trustee; and 2ndly, an assignment by such provisional trustee to the continuing and new trustees jointly. But the necessity for two deeds is now removed by the 21st section of 22 & 23 Vict. c. 35, which provides that “any person shall have power to assign personal property now by law assignable, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.”

OF A STRICT  
SETTLEMENT  
IN THE  
PLACE OF  
RETIRING  
TRUSTEE.

Sale of part  
of freeholds  
under a  
power, and  
purchase of  
other hereditaments.

Conveyance  
of purchased  
hereditaments  
to  
uses of  
settlement.

Desire of  
one of  
trustees to  
be discharged.

Witnessing  
part.

1. Appointment  
of new  
trustee.

during his life, without impeachment of waste ; and from and after the determination of that estate by any means in his lifetime, To the use of the said E. F. and G. H., and their heirs during the life of the said A. B., upon trust to preserve contingent remainders, with divers remainders over ; and by the indenture now in recital certain leasehold hereditaments situate in, &c., in the same indenture more particularly described, with their appurtenances, were assigned unto the said E. F. and G. H., their executors, administrators, and assigns, upon the trusts, and with and subject to the powers and provisions therein declared and contained of and concerning the same : AND by the said indenture, &c. (*Recite power to appoint new trustees*):

AND WHEREAS, under and by virtue of a power of sale contained in the said indenture of settlement, certain portions of the freehold hereditaments thereby settled have been sold, and the moneys produced by such sale have been laid out in the purchase of the hereditaments comprised in and conveyed by the indenture next hereinafter recited : AND WHEREAS by an indenture dated the — day of —, and made between (*parties*), certain messuages, tenements, lands, and hereditaments, situate — and therein particularly mentioned, were conveyed by — unto the said E. F. and G. H., and their heirs, to the uses, upon the trusts, and with and subject to the powers and provisions in and by the said indenture of settlement declared and contained concerning the freehold hereditaments therein comprised, or as near thereto as circumstances would then admit : AND WHEREAS the said E. F. is desirous of being discharged from the trusts reposed and vested in him by the said indenture of settlement, and the said A. B. and C. his wife are desirous of appointing the said L. M. to be a trustee of the same indenture in the place of the said E. F. : NOW THIS INDENTURE WITNESSETH as follows (*b*) :—

1. THE said A. B. and C. his wife, in exercise of the power for this purpose given to or vested in them by the hereinbefore recited indenture of settlement, and of all other powers (if any) them hereunto enabling, do hereby appoint the said L. M. to be a trustee of the said indenture of settlement in the place of the said E. F., to the end and intent that he the said L. M. shall and may exercise, or join in exer-

(*b*) If the paragraph plan is not adopted, substitute for the words "as follows" the word "that."

cising, all the trusts, powers, and authorities reposed in the said E. F. jointly with the said G. H. by the said indenture, in the same manner as if he the said L. M. had been thereby originally appointed a trustee in the place of the said E. F.

OF A STRICT  
SETTLEMENT  
IN THE  
PLACE OF  
RETIRING  
TRUSTEE.

2. IN (c) consideration of the premises, THE said E. F. and G. H. (at the request and by the direction of the said A. B. and C. his wife, testified by their respectively being parties to and executing these presents) do hereby grant unto the said L. M. and his heirs, ALL such and so many of the freehold messuages, lands, hereditaments, and premises comprised in and assured by the said indenture of settlement, as remain unsold: AND ALSO all and singular the messuages, farms, lands, tenements, and hereditaments comprised in and assured by the said indenture of the — day of —, together with their and every of their rights, members, and appurtenances: AND ALL THE ESTATE, right, title, interest, property, claim, and demand whatsoever, of them the said E. F. and G. H., and each of them, in, and to the said premises: TO HAVE AND TO HOLD the hereditaments and premises hereby granted, or expressed so to be, unto the said L. M. and his heirs, to the use of the said G. H. and L. M., their heirs and assigns, for all the estate or estates, interest or interests of them the said E. F. and G. H. therein, and upon the trusts by the said indenture of settlement declared concerning the same estate or estates, interest or interests (d).

2. Convey-  
ance of  
freeholds  
subject to  
subsisting  
uses of  
settlement.

To hold to  
use of old  
and new  
trustees.

3. IN (e) consideration of the premises, THE said E. F. and G. H., at the request and by the direction of the said A. B. and C. his wife (testified as aforesaid) do hereby assign unto the said G. H. and L. M., their executors, administrators, and assigns, ALL AND SINGULAR the leasehold messuages or tenements, lands, hereditaments, and premises comprised in and assigned by the said indenture of settlement, with their rights, members, and appurtenances, AND ALL THE ESTATE, &c., TO HAVE AND TO HOLD the hereditaments and premises hereby assigned, or expressed so to be, unto the said G. H. and L. M. their executors, administrators, and assigns, upon the trusts, and

3. Assign-  
ment of  
leaseholds.

To hold  
old and  
trustees.

(c) If the paragraph plan is not adopted, add, before the words "In consideration," &c., the words "AND THIS INDENTURE ALSO WITNESSETH that."

(d) If by the original settlement no estate is created to preserve contingent remainders, and the trustees take no other estate or interest in the freeholds, this conveyance of freeholds will be omitted.

(e) If the paragraph plan is not adopted, add, before the words "In consideration," &c., the words "AND THIS INDENTURE ALSO WITNESSETH that."

OF A STRICT  
SETTLEMENT  
IN THE  
PLACE OF  
RETIRING  
TRUSTEE.

Upon trusts  
of settle-  
ment.

4. Covenant  
by retiring  
trustee  
against  
incum-  
brances.

with and subject to the powers and provisions in and by the said indenture of settlement declared and contained concerning the same, or such of them as are now subsisting and capable of taking effect.

4. THE said E. F. doth hereby for himself, his heirs, executors, and administrators, covenant with the said G. H. and L. M., their heirs, executors, administrators, and assigns that he the said E. F. hath not at any time done or executed, or knowingly suffered or been party or privy to any act, deed, or thing, whereby or by reason whereof he is prevented from joining with the said G. H. in granting and assigning the said freehold and leasehold hereditaments and premises in manner aforesaid, or whereby the same, or any part thereof respectively, are, is, or may be in any-wise incumbered.

IN WITNESS, &c.

#### No. IV.

OF A WILL  
IN THE  
PLACE OF A  
DECEASED  
TRUSTEE.

#### APPOINTMENT *by* SURVIVING TRUSTEE *of a* NEW TRUSTEE *of a* WILL *of* REAL *and* PERSONAL *Estate* *in the place of a* DECEASED TRUSTEE; DECLARATION *of* TRUST *of* STOCK *representing proceeds of* Testator's *Estate*.

Parties.

Recite will.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*surviving trustee*), of the one part, and E. F. of, &c. (*new trustee*), of the other part: WHEREAS X. Y., late of, &c., deceased, duly made his will, dated the — day of —, and thereby, after several specific bequests, gave, devised, and bequeathed all his real and personal estate not thereinbefore otherwise disposed of (except estates vested in him as a trustee or mortgagee) unto the said A. B. and C. D. of, &c., their heirs, executors, administrators, and assigns respectively, upon trust to sell, call in, and convert into money the same, and with and out of the money arising thereby to pay his (the said testator's) funeral and testamentary expenses and debts, and the legacies thereby bequeathed, and to invest the residue of the said moneys in or upon such stocks, funds, or securities as therein mentioned, and to stand possessed of the said residuary moneys, and the stocks, funds, and securities wherein the same should be invested, upon the trusts and with and subject to the powers and provisions therein declared and contained concerning the

same. And the said testator, &c. (*Devise of trust and mortgage estates*). And the said testator declared that if, &c. (*Recite the power enabling the surviving trustee to appoint a new trustee in place of one dying, &c.*), and the said testator appointed the said A. B. and C. D. to be the executors of his said will: AND WHEREAS the said testator died on the — day of —, without having revoked or altered his said will, and the same was shortly afterwards duly proved by the said executors thereof in the principal Registry of the Probate Division of the High Court of Justice: AND WHEREAS the said testator was at his death seised in fee simple of a freehold farm and lands situate at, &c., and he was also possessed of certain leasehold lands and hereditaments held under the Dean and Chapter of — for the residue of a term of twenty-one years granted therein by an indenture dated, &c., and made, &c., and he was also possessed of or entitled to other personal estate: AND WHEREAS after the death of the said testator, the said A. B. and C. D. sold the said freehold and leasehold hereditaments of the said testator, and called in and converted into money such part of his other personal estate not specifically bequeathed as did not consist of money, and with and out of the moneys produced by such sale, calling in, and conversion, and with and out of the testator's ready money, paid his funeral and testamentary expenses and debts, and the legacies bequeathed by his said will, and the probate and legacy duties payable under the said will, and invested the sum of £——, being the residue of the said moneys, in the purchase of the sum of £—— Consolidated £3 per Cent. Annuities: AND WHEREAS the said testator was not at the time of his death seised of any hereditaments as a trustee or mortgagee: AND WHEREAS the said C. D. died on the — day of —: AND WHEREAS the said A. B. is desirous of appointing the said E. F. to be a trustee of the said will in the place of the said C. D.: AND WHEREAS it is intended that the said sum of £—— Consolidated £3 per Cent. Annuities shall be transferred into the joint names of the said A. B. and E. F., in the books of the Governor and Company of the Bank of England so soon as conveniently may be after the execution of these presents: NOW THIS INDENTURE WITNESSETH, that the said A. B. in exercise of the power for this purpose given to him by the said will of the said X. Y., and of all other powers (if any) him hereunto enabling, doth hereby appoint the said E. F. to

OF A WILL  
IN THE  
PLACE OF A  
DECEASED  
TRUSTEE.

Death of  
testator.

That testator was  
seised of  
freeholds  
and possessed of  
leaseholds  
at his  
death, &c.

That trustees have  
sold and  
converted  
estate and  
invested  
proceeds.

Death of  
one trustee.

That it is  
intended to  
transfer  
stock to  
continuing  
and new  
trustee.

Witnessing  
part.



OF A WILL  
IN THE  
PLACE OF A  
DECEASED  
TRUSTEE.

Appoint-  
ment of new  
trustee in  
the place of  
deceased  
trustee.

Declaration  
of trust  
of stock  
represent-  
ing resi-  
duary  
estate of  
testator.

be a trustee of the said will in the place of the said C. D. deceased, And the said E. F. doth hereby consent to be such trustee accordingly : AND IT IS HEREBY AGREED AND DECLARED that the said A. B. and E. F., their executors, administrators and assigns, shall stand possessed of and interested in the said sum of £—— Consolidated £3 per Cent. Annuities, to be transferred into their joint names as aforesaid, upon the trusts, and with and subject to the powers and provisions, upon, with, and subject to which the same ought to be held under the said will of the said X. Y. deceased.

IN WITNESS, &c.

### No. V.

#### APPOINTMENT *by* SURVIVING TRUSTEE *of a* NEW TRUSTEE *of a* WILL *of* REAL *and* PERSONAL Estate —where the Estate has not been realized (a).

OF WILL IN  
PLACE OF  
DECEASED  
TRUSTEE.

Parties.

Recital of  
will.

Desire to  
appoint  
new trustee.

Appoint-  
ment of  
new trustee.

THIS INDENTURE, made the —— day of —— 18—, BETWEEN A. B. of, &c. (*surviving trustee*) of the one part, and E. F. of, &c. (*new trustee*), of the other part: WHEREAS X. Y., late of, &c., deceased, duly made his will dated the —— day of ——, 18—, and thereby (after sundry devises and bequests), gave, devised, and bequeathed all his real and personal estate not thereby otherwise disposed of (hereinafter called “the testator’s residuary estate”) unto the said A. B. and C. D. of, &c., their heirs, executors, administrators, and assigns respectively upon the trusts therein declared concerning the same: AND, &c. (*devise of trust and mortgage estates; power to appoint new trustees, and appointment of A. B. and C. D. to be executors—death of testator, and probate of his will by both executors—death of C. D.*): AND WHEREAS the estate of the said testator has not been fully got in nor have all his debts been yet paid: AND WHEREAS the said A. B. is desirous of appointing the said E. F. to be a trustee of the said will in the place of the said C. D.: Now, &c. (*appointment of new trustee as in last Precedent*): AND THIS INDENTURE ALSO WITNESSETH that in consideration of the premises, THE said A. B.

(a) Where the particulars of the property have been ascertained and the debts, &c., paid, the next Precedent should be used.

doth hereby grant unto the said E. F., and his heirs, all such part of the testator's residuary estate as consists of freehold hereditaments, AND doth hereby assign unto the said A. B. and E. F., their executors, administrators, and assigns, ALL the testator's residuary estate other than freehold hereditaments: To HOLD the premises hereby granted unto the said E. F. and his heirs, To the use of the said A. B. and E. F., their heirs and assigns, AND TO HOLD the premises hereby assigned unto the said A. B. and E. F., their executors, administrators, and assigns, NEVERTHELESS as to all the said premises, UPON the trusts and with and subject to the powers and provisions by and in the said will declared, and contained of and concerning the same: AND the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., his heirs, executors, administrators, and assigns, that he the said A. B. hath not done or knowingly suffered anything whereby he is prevented from granting and assigning the said premises in manner aforesaid, or whereby the same or any part thereof are, is, or may be incumbered: PROVIDED ALWAYS, and it is hereby declared that these presents shall not pass any estates vested in the testator as a trustee or mortgagee, nor shall the same operate as an assent by the said A. B. in his character of executor to the aforesaid residuary bequest nor prevent him from calling in the outstanding personal estate, or any part thereof, or applying the same in payment of debts or otherwise in a due course of administration, or from doing any other act or thing in his character of executor which he might have done if these presents had not been executed, but the position of all parties after the execution of these presents shall be the same in all respects as if the said E. F. had been named in the said will as a trustee (but not an executor) in the place of the said C. D., and these presents had not been executed.

OF WILL IN  
PLACE OF  
DECEASED  
TRUSTEE.

Conveyance  
and assign-  
ment of  
residuary  
estate so as  
to vest in  
surviving  
and new  
trustees  
upon trusts  
of will.

Covenant  
by surviving  
trustee that  
he has done  
no act to  
incumber.

Proviso that  
trust and  
mortgage  
estates  
shall not  
pass, and  
that all  
rights and  
privileges  
of the  
surviving  
executor as  
such shall  
not be  
affected.

IN WITNESS, &c.

## No. VI.

OF A WILL  
UNDER  
LORD CRAN-  
WORTH'S  
ACT.

---

APPOINTMENT of a NEW TRUSTEE of a WILL of  
REAL and PERSONAL Estate in the place of a DIS-  
CLAIMING TRUSTEE, under the power conferred by  
LORD CRANWORTH'S ACT; CONVEYANCE and AS-  
SIGNMENT of REAL and PERSONAL Estate to con-  
tinuing and new Trustees.

Parties. THIS INDENTURE made the — day of —, BETWEEN  
A. B. of, &c. (*continuing trustee*), of the one part, and E. F., of,  
&c. (*new trustee*), of the other part (*Recite will as in last Prece-*  
*dent, death of testator and probate by A. B. alone*): AND WHEREAS  
Disclaim- by a deed poll under the hand and seal of the said C. D., dated  
er by one of the — day of —, the said C. D. has absolutely disclaimed  
trustees. and renounced all the real and personal estate by the said will  
devised and bequeathed unto the said A. B. and C. D., their  
heirs, executors, administrators, and assigns as aforesaid, and the  
offices of trustee and executor under the said will; AND WHEREAS  
the funeral and testamentary expenses of the said testator and  
his debts (so far as they have been ascertained), and the legacies  
given by his will have been paid and satisfied: AND WHEREAS  
the real and residuary personal estate of the said testator now  
consists of or is represented by the particulars mentioned and  
set forth in the schedule hereto: AND WHEREAS the said A. B.  
is desirous of appointing the said E. F. to be a trustee of the said  
will in the place of the said C. D.: NOW THIS INDENTURE  
Witnessing WITNESSETH that the said A. B., in exercise of the power  
part. Appoint- ment of new  
ment of new trustee in  
trustee in place of  
place of disclaiming  
disclaiming trustee.  
trustee.

Second witnessing part. Continuing trustee grants freehold

doth hereby appoint the said E. F. to be a trustee of the said will in the place of the said C. D., AND the said E. F. doth hereby consent to be such trustee accordingly: AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the direction in this behalf contained in the said Act, and in consideration of the premises, THE said A. B. doth hereby grant unto the said E. F. and his heirs, ALL THE freehold hereditaments described in the first part of the schedule

hereto AND all other (if any) the freehold hereditaments of or to which the said X. Y. was seised or entitled at the time of his decease, and which are now vested in the said A. B. as the continuing trustee of the same will (other than and except any hereditaments which were vested in the said X. Y. at the time of his death as a trustee or mortgagee) (*and all the estate, &c.*):

OF A WILL  
UNDER  
LORD CRAN-  
WORTH'S  
ACT.

To HOLD the same unto the said E. F. and his heirs, To the use of the said A. B. and E. F., their heirs and assigns for ever:

to use of  
continuing  
and new  
trustees.

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the direction in this behalf contained in

Third  
witnessing  
part.

the said Act, and in consideration of the premises, the said A. B. doth hereby assign unto the said A. B. and E. F., their

executors, administrators, and assigns, 1st, ALL the leasehold hereditaments described in the second part of the schedule

Continuing  
trustee  
assigns  
leaseholds  
and other  
personal  
estate

hereto, and all other (if any) the leasehold hereditaments of or to which the said testator X. Y. was possessed or entitled at the

time of his decease, and which are now vested in the said A. B. as the continuing trustee of the same will: AND, secondly, all

the furniture and other personal estate mentioned in the fourth part of the schedule hereto, and all other (if any) the personal

estate of the said testator X. Y. now vested in the said A. B. as such continuing trustee as aforesaid (except the moneys, stocks,

funds, and securities mentioned in the third part of the schedule hereto, which are intended to be transferred to the said A. B.

and E. F. in the manner mentioned on that behalf in the said third part of the said schedule), And all the estate and interest

of the said A. B. in the said premises: To HOLD the premises firstly hereinbefore assigned or expressed so to be unto the said

unto con-  
tinuing and  
new trus-  
tees.

A. B. and E. F., their executors, administrators, and assigns for the several terms, estates, and interests now subsisting therein

respectively: AND TO HOLD the premises secondly hereinbefore assigned, or expressed so to be, unto the said A. B. and E. F.,

their executors, administrators, and assigns, absolutely, AND it is hereby agreed and declared that the said A. B. and E. F., their

Declaration  
of trust.

heirs, executors, administrators, and assigns respectively, shall stand seised and possessed of all the said freehold and leasehold

hereditaments and personal estate hereby granted and assigned absolutely, and also the moneys, stocks, funds, and securities

mentioned in the third part of the schedule hereto, and the rents, profits, and income thereof accruing, upon the trusts and

with and subject to the powers and provisions by and in the

OF A WILL  
UNDER  
LORD CRAN-  
WORTH'S  
ACT.

Covenant by  
continuing  
trustee  
against  
incum-  
brances.

said will declared and contained concerning the same respectively, or such of them as are now subsisting and capable of taking effect : AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F., his heirs, executors, administrators, and assigns, that he the said A. B. hath not done or knowingly suffered or been party or privy to any act, deed or thing whereby he is prevented from granting and assigning the several freehold and leasehold hereditaments, personal estate, and premises respectively, in manner aforesaid, or whereby the same, or any part thereof respectively, are, is, can or may be in anywise incumbered.

IN WITNESS, &c.

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THE SCHEDULE ABOVE REFERRED TO.

*The First Part.*

A freehold farm and lands, called —, situate in the parish of —, containing — or thereabouts, and in the occupation of —.

*The Second Part.*

A leasehold farm and lands, called —, situate in —, held under a lease dated or for the term of — years, computed from, &c.

*The Third Part.*

1. A sum of £—— £3 per Cent. Consolidated Bank Annuities, standing in the name of the said testator.

2. A sum of £——, secured by a mortgage of real estate, situate at —, which mortgage was made by an indenture dated, &c., and made, &c.

3. The sum of £—— debenture stock of the                  Railway Company, &c., &c.

It is intended that No. 1 shall be transferred into the names of the said A. B. and E. F., and that No. 2 and the security for the same shall be assigned unto the said A. B. and E. F. by an indenture already prepared and endorsed on the said indenture of mortgage, and that No. 3 shall be also forthwith transferred to them by a deed already prepared for that purpose.

*The Fourth Part.*

The furniture in and about, &c.

(*Other Particulars.*)

## DISENTAILING ASSURANCE.

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A TENANT in tail in possession of freehold land may under the Fines and Recoveries Act (*a*), dispose of the fee simple or any less estate by a deed enrolled in the Chancery division of the High Court of Justice (*b*), but if the estate tail is preceded by an estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years), created by the same settlement, the tenant in tail, unless he is also tenant in fee simple in remainder expectant on his own estate tail, cannot, without the consent of the person called by the Act "the protector of the settlement" (*c*), create any larger estate than a base fee, *i.e.*, an estate which will be a complete bar to the issue, but not to those in remainder or reversion, and during the continuance of such issue will either be subject to his disposition, or descend to his heirs as a fee simple.

Powers of a tenant in tail in possession or remainder.

A tenant in tail who has created a base fee, may convert such base fee into a fee simple, by another enrolled deed, so soon as there ceases to be a protector of the settlement (*d*), or during the protectorship with the protector's consent. And if the owner of a base fee becomes entitled to the immediate reversion in fee simple, the estate is enlarged *ipso facto* (*e*).

Enlargement of base fee.

The general rule laid down by the Act as to pro-

General rule as to

(*a*) 3 & 4 Wm. 4, c. 74, s. 15.

(*b*) Sec. 41. He may grant leases for a term not exceeding twenty-one years, to commence from the date of the lease, or from any time not exceeding twelve calendar months from the date thereof where the

rent is a rack rent, or not less than 5-6ths of the rack rent without having the lease enrolled.

(*c*) Sect. 34.

(*d*) Sect. 19.

(*e*) Sect. 39.

the person  
who shall be  
protector.

tectors is, that where there is a tenant in tail under a settlement, and there is subsisting under the *same* settlement any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years) prior to the estate tail, then the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or the person who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being for all the purposes of the Act deemed the prior estate), is the protector of the settlement, and is to be deemed the owner of such prior estate, although the prior estate may have been charged by the owner thereof, or by the settlor, or otherwise howsoever, and although the whole of the rents and profits be required for the payment of the charges thereon, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner, and that an estate by the curtesy in respect of the estate tail, or of any prior estate created by the same settlement, is to be deemed a prior estate under the same settlement, and that an estate by way of resulting use or trust, to or for the settlor, is also to be deemed an estate under the same settlement (*f*).

Power to  
settlor to  
appoint a  
protector.

The settlor may appoint any person, or number of persons, not exceeding three, to be protector or protectors in lieu of the person who would have been the protector if there had been no such appointment (*g*).

Lunatic  
protector.

Where the protector is a lunatic, the Lord Chancellor, or other person for the time being intrusted with the care of lunatics, is the protector in the place of such lunatic (*h*).

Consent of  
protector,  
how given.

The consent of the protector must be given by the same assurance by which the disposition is effected, or by another deed executed on or before the day on which the assurance is made (*i*). And the protector

(*f*) Sect. 22. The reader is referred to the fifteen following sections of the Act for further provisions respecting protectors.

(*g*) Sect. 32.

(*h*) Sect. 33.

(*i*) Sect. 42.

cannot revoke his consent (*k*). If the consent is given by a distinct deed, it must be enrolled at or before the time when the assurance of the tenant in tail is enrolled (*l*).

A disentailing deed by a married woman requires the concurrence of her husband, and must be acknowledged as in other cases (*m*); and such concurrence and acknowledgment are necessary, even when the wife is equitable tenant in tail for her separate use (*n*). The acknowledgment may be taken subsequently to the enrolment of the deed, and after the expiration of the six months limited for enrolment (*o*). Where a married woman is protector she may consent to a disposition by the tenant in tail as if she were a feme sole (*p*).

Disposition by married women, tenants in tail.

The powers of disposition given to tenants in tail are applicable to copyholds, except that the disposition in the case of an estate at law, is to be made by surrender, and, in the case of an equitable estate, by surrender, or deed entered on the court rolls of the manor, instead of being enrolled in the Chancery division. The protector's consent to a disposition of copyholds may be by deed, to be produced to the lord of the manor at or before the time when the disentailing surrender is made, and then entered on the court rolls, or it may be given to the person taking the surrender, in which case the fact of the consent must be mentioned in the memorandum of surrender (*q*).

Tenants in tail of lands held by copy of court roll.

A deed to bar an equitable entail of copyholds must be entered on the court rolls within six months after its execution (*r*).

Disentailing deed of copyholds must be entered on court rolls within six months.

If a tenant in tail creates a voidable estate in favour of a purchaser for valuable consideration, and afterwards, under the Act, makes a disposition of the same lands, such disposition, whatever its object may be, has the effect of confirming the voidable estate to the extent to which the second deed is an effective disposition, except

A voidable estate by a tenant in tail in favour of a purchaser, confirmed by a subsequent disposition of such tenant

(*k*) Sect. 44.  
 (*l*) Sect. 46.  
 (*m*) Sect. 40.  
 (*n*) *Cooper v. Macdonald*, L. R. 7 C. D. 288.  
 (*o*) *Ex parte Taverner*, 1 Jur.

N. S. 1194.  
 (*p*) Sect. 45.  
 (*q*) Sects. 51 to 54.  
 (*r*) *Honywood v. Foster*, 30 Beav. 1; *Gibbons v. Snape*, 32 *ib.* 130.



in tail, under the Act, but not against a purchaser without notice.

that if the second disposition is made to a *purchaser* for valuable consideration who has not *express notice* of the voidable estate, then the voidable estate is not confirmed as against such purchaser and the persons claiming under him (s).

Disposition of lands of bankrupt tenant in tail.

Where a tenant in tail of lands becomes bankrupt, the trustee appointed in the bankruptcy is empowered to deal with the lands in the same manner as the bankrupt might have dealt with the same (t).

Money subject to be invested in the purchase of lands to be entailed, may be disentailed.

Lands to be sold, where the money arising from the sale thereof is subject to be invested in the purchase of land to be settled so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled so that any person, if the lands were purchased, would have an estate tail therein, may be disentailed, and they are, for this purpose, considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to, but where the property thus disentailed consists of leasehold lands for years, or of money, such leasehold lands or money are, as to the person in whose favour or for whose benefit the disentailing disposition is made, treated as personal estate (u).

Retrospective effect of enrolment.

Every deed required to be enrolled, operates (when enrolled) from the time of its execution, except as against any person claiming for valuable consideration under any subsequent deed duly enrolled before the enrolment of the first deed (x).

Possession adverse to a tenant in tail runs against all whom he could have barred.

When the right of a tenant in tail to recover land has been barred by the statute of limitations, all persons claiming any estate, interest, or right which such tenant in tail might lawfully have barred, are barred also, and when time has begun to run against a tenant in tail, it continues to run after his death against all persons whom he might have barred (y).

An assurance by a tenant in tail, which

If a tenant in tail makes an assurance, which is not effectual to bar the remainders over, and the person

(s) Sect. 38.

(t) See 32 & 33 Vict. c. 71, s. 25; 3 & 4 Wm. 4, c. 74, ss. 56 to 73.

(u) Sect. 71.

(x) Sect. 74.

(y) 3 & 4 W. 4, c. 27, sects. 21, 22; 37 & 38 Vict. c. 57, sect. 9.

claiming by virtue of such assurance, enters into possession or receipt of the profits, the remaindermen are barred (under the new Act) (z) at the end of twelve years from the time at which such assurance, if it had then been executed by the tenant in tail, would *without the consent of any other person*, have operated to bar the remainder.

is ineffectual to bar the remaindermen, if followed by possession confers a good title against the remainderman at the end of twelve years from the time when the assurance, if then executed, would have barred them.

But the above provision only applies to assurances which are effectual to bar the issue, and not to an unrolled deed (a).

If an estate *pour autre vie* is limited in the form of an estate tail, although it will descend according to the terms of the limitation during its continuance, the *quasi* tenant in tail can bar the entail and the remainders over by any act *inter vivos*, without observing the formalities prescribed by the Fines and Recoveries Act, but not by will, and the existence of prior incumbrances creates no impediment (b). The renewal by a *quasi* tenant in tail of a lease for lives will bar the entail and the remainders over, and the result will be the same, although the surrendered lease may be vested in trustees and they do not concur in the surrender (c). If the *quasi* entail is preceded by a life interest, the remainders over will not be barred without the concurrence of the tenant for life (d), although without such concurrence it would seem that the *quasi* tenant in tail can bar himself and his issue (e).

Estates *pour autre vie*.

## No. I.

### DISENTAILING ASSURANCE of FREEHOLDS by a TENANT IN TAIL in POSSESSION.

DISENTAILING ASSURANCE BY TENANT IN TAIL IN POSSESSION.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*tenant in tail*), of the one part, and C. D. of, &c. (*grantee to uses*), of

Parties.

(z) 37 & 38 Vict. c. 57, sect. 6. But this Act does not come into operation until the 1st January, 1879.

(a) *Penny v. Allen*, 7 D. M. & G. 409; *Morgan v. Morgan*, L. R. 10 Eq. 99.

(b) *Allen v. Allen*, 2 Dru. & War. 327.

(c) *Grey v. Mannock*, 2 Eden.

339; *Blake v. Blake*, 1 Cox, 266; *Campbell v. Sandys*, 1 Schf. & Lef. 225; *Doe d. Blake v. Luxton*, 6 Term Rep. 289.

(d) *Wastney v. Chappell*, 3 Bro. P. C. 53, Tom. Ed.

(e) *Allen v. Allen*, 2 Dru. & War. 337.

DISENTAIL-  
ING ASSUR-  
ANCE BY  
TENANT IN  
TAIL IN  
POSSESSION.

Recital of  
settlement.

Death of  
tenant for  
life, and  
attainment  
by tenant  
in tail of his  
majority.  
Witnessing  
part.

Grant of  
parcels

to grantees  
to use of  
grantor in  
fee simple.

the other part: WHEREAS by an indenture dated, &c., and made, &c., the capital messuage or mansion house called —, and divers other messuages, lands, and hereditaments situate in the parishes of —, in the county of —, in the said indenture and the schedules thereto particularly described, were settled and assured to the use of H. B. and his assigns during his life, with remainder (subject to certain charges which have determined) to the use of the first son of the said H. B. in tail male with divers remainders over: AND WHEREAS the said H. B. died on the — day of —, 18—: AND WHEREAS the said A. B. is the first son of the said H. B., and he attained the age of twenty-one years on the — day of —, 18—: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf, grant unto the said C. D., and his heirs, ALL and singular the capital and other messuages, lands, tenements, and hereditaments comprised in and settled by the hereinbefore recited indenture, and all other (if any) the lands, tenements, and hereditaments in England or Wales of or to which the said A. B. is seised or entitled as tenant in tail, whether at law or in equity, under the said indenture, or otherwise howsoever, with their and every of their rights, members, and appurtenances, AND ALL the estate, right, title, interest, claim, and demand whatsoever of him the said A. B. in and to the said premises and every part thereof: TO HAVE AND TO HOLD the hereditaments and premises hereby granted, or expressed so to be (freed and discharged from the estate tail of the said A. B., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail) unto the said C. D. and his heirs, TO THE USE of the said A. B., his heirs and assigns, for ever.

IN WITNESS, &c.

## No. II.

CONVEYANCE  
BY TENANT  
IN TAIL IN  
POSSESSION.

CONVEYANCE *by a TENANT in TAIL in POSSESSION*  
*to a Purchaser for an ESTATE in FEE SIMPLE.*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*vendor*), of the one part, and C. D. of, &c. (*pur-*

chaser), of the other part (*Recite settlement, death of H. B., and that A. B. is eldest son, as in last Precedent*): AND WHEREAS the said A. B. hath agreed with the said C. D. for the absolute sale to him of the hereditaments hereinafter described, and intended to be hereby granted (being part of the hereditaments settled by the hereinbefore recited indenture) and the inheritance thereof in fee simple in possession, free from incumbrances, at the price of £——: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £——, &c. (*the receipt, &c.*), the said A. B. doth by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf grant unto the said C. D., his heirs and assigns, ALL, &c. (*parcels—general words—and all the estate, &c.*): TO HAVE AND TO HOLD the hereditaments and premises hereby granted or expressed so to be (freed and discharged from the estate tail of the said A. B., and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail) unto and to the use of the said C. D., his heirs and assigns for ever (*Covenants for title, as a purchase deed, see Vol. I.*).

CONVEYANCE  
BY TENANT  
IN TAIL IN  
POSSESSION.

Agreement  
for sale in  
fee simple.

Witnessing  
part.

Grant of  
parcels to  
purchaser  
in fee.  
Discharge  
of estate  
tail and  
remainders  
over.

IN WITNESS, &c.

### No. III.

DISENTAILING ASSURANCE *by a* TENANT *in* TAIL *in* REMAINDER: *the* PROTECTOR *joins to give his* CONSENT.

BY TENANT  
IN TAIL IN  
REMAINDER  
WITH CON-  
SENT OF  
PROTECTOR.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*tenant in tail in remainder*), of the first part, H. B. of, &c. (*protector*), of the second part, and C. D. of, &c. (*releasee*), of the third part: WHEREAS M. N., late of ——, deceased, duly made his will, dated the —— day of ——, and thereby gave and devised all his manors, messuages, lands, tenements, and hereditaments situate in the county of ——, being freehold of inheritance, to the use of the said H. B. and his assigns for his life, without impeachment of waste, with remainder after his decease to the use of his first and other sons successively, in tail male, with divers remainders over. (*Death of testator and probate of his will, and that A. B. is eldest son of H. B., and has attained twenty-one*): NOW THIS INDENTURE

Parties.

Recite will.

BY TENANT  
IN TAIL IN  
REMAINDER  
WITH CON-  
SENT OF  
PROTECTOR.

Grant of  
parcels  
subject to  
uses of will  
with con-  
sent of  
protector.

To hold  
(subject to  
life estate of  
protector)  
to grantor  
in fee,  
discharged  
of estates  
tail and  
remainders  
over.

WITNESSETH, that, the said A. B., with the consent of the said H. B. as the protector of the settlement made by the said will (testified by his being a party to and executing these presents), doth by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf grant unto the said C. D. and his heirs, ALL and singular the manors, messuages, lands, and hereditaments devised by the said will, or which have by any means become subject to the uses thereof, TOGETHER with all rights, members, and appurtenances to the said premises belonging, or appertaining, or reputed to belong or appertain, AND ALL the estate, right, title, interest, claim and demand whatsoever of the said A. B. in and to the same. TO HAVE AND TO HOLD the hereditaments and premises hereby granted, or expressed so to be (subject to the estate for life of the said H. B. therein, and to the powers and privileges annexed to or exercisable during the continuance of the same estate, but freed and absolutely discharged of and from the said estate tail of the said A. B., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail), unto the said C. D., and his heirs, TO THE USE of the said A. B., his heirs and assigns for ever.

IN WITNESS, &c.

#### No. IV.

DEED *barring the ENTAIL in STOCK liable to be laid out in the purchase of LAND.*

OF STOCK  
TO BE  
LAID OUT IN  
LAND.

Parties.

Recite will.

THIS INDENTURE, made the — day of — BETWEEN A. B. of, &c. (*tenant for life*), of the first part, C. D. of, &c. (*tenant in tail*), of the second part, and E. F. of, &c. (*trustee*), of the third part: WHEREAS G. H., late of —, deceased, duly made his will, dated the — day of —, and thereby gave and bequeathed a sum of £1500 £3 per Cent. Consolidated Annuities, then standing in his name, unto L. M. and N. O., their executors, administrators, and assigns, upon trust to convert the same into money as soon as conveniently might be after his (the said testator's) decease, and to lay out the moneys to arise thereby in the purchase of freehold lands of inheritance; AND the said testator directed that the lands so to be purchased should be conveyed and settled to the use of his wife the said

A. B. for her life, and after her decease to the use of his eldest son the said C. D. in tail male, with divers remainders over OF STOCK TO BE LAID OUT IN LAND. (*Death of testator and probate of will*): AND WHEREAS, shortly after the death of the said testator, the said sum of £1500 £3 per Cent. Consolidated Annuities was transferred into the names of the said L. M. and N. O. in the books of the Governor and Company of the Bank of England, but no part thereof has been laid out in the purchase of land pursuant to the aforesaid trust and direction in that behalf contained in the said recited will: AND WHEREAS the said A. B. and C. D. have agreed to disentail the said stock in the manner hereinafter expressed; NOW THIS Death of testator, and probate of will. That stock has not been laid out in land. INDENTURE WITNESSETH, that the said A. B. and C. D. do by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf assign unto the said E. F., his executors, administrators, and assigns: ALL THAT THE SAID sum of £1500 £3 per Cent. Consolidated Annuities, and the dividends thereof: AND ALL THE Assignment of stock. interest of the said A. B. and C. D. respectively therein: TO HOLD the same (freed and discharged from the trust or direction contained in the said will for laying out the same Consolidated Annuities, or the moneys to arise by the sale thereof, in the purchase of lands, and from the estate tail of the said C. D. therein, and all remainders, estates, and powers to take effect after the determination or in defeasance of such estate tail) unto the said E. F., his executors, administrators, and assigns: UPON TRUST that the said E. F., his executors or administrators, shall forthwith require the said L. M. and N. O. to transfer the said sum of £1500 £3 per Cent. Consolidated Annuities into the name or names of the said E. F., his executors or administrators, and shall thenceforth stand possessed of and interested in the same as personal estate: IN TRUST to pay the dividends thereof unto, or permit the same to be received by, the said A. B. and her assigns during her life; and from and after her decease, IN TRUST for the said C. D., his executors, administrators, and assigns, for his and their own absolute benefit. To hold to trustee.

IN WITNESS, &c.

In trust for tenant for life, with remainder to tenant in tail absolutely.

## No. V.

CONVEYANCE  
TO USES BY  
TENANT FOR  
LIFE AND  
TENANT IN  
TAIL.

---

CONVEYANCE *by a* TENANT FOR LIFE *and* TENANT IN TAIL *in remainder of* LANDS, *and* STOCK *liable to be laid out in lands, to such uses as they shall JOINTLY appoint, and in* DEFAULT *of such* APPOINTMENT, *to the subsisting* USES *under the original* SETTLEMENT.

Parties.

Recite  
settlement.

THIS INDENTURE, made the — day of —, BETWEEN A. B., of, &c. (*tenant for life*), of the first part, D. B., of, &c. (*tenant in tail in remainder*), of the second part, and E. F., of, &c. (*grantee to uses*), of the third part: WHEREAS by an indenture dated, &c., and made, &c., the manor of —, and the capital messuage or mansion-house called —, and divers other messuages, lands, tenements, and hereditaments situate in the parishes of —, in the said indenture particularly described were limited and assured, from and after the solemnization of the said then intended marriage, to the use of the said A. B. during his life without impeachment of waste, with remainder after his decease to the use and intent that if C. B. (*the wife of A. B.*) should survive the said A. B., she should receive thereout a yearly rent-charge of £— during her life by way of jointure, with usual powers and remedies for recovering the same, and subject thereto to the use of the said (*trustees of term*), their executors, administrators, and assigns, for the term of 1000 years computed from the decease of the said A. B., UPON the trusts therein declared for better securing the said rent-charge, and for raising portions for the younger children of the said then intended marriage, with remainder to the use of the first son of the said then intended marriage in tail male, with remainders over: AND in the said indenture is contained the usual power of sale and exchange, and a direction that the moneys to arise from any such sale shall be laid out in the purchase of other hereditaments, and shall in the meantime be invested in or upon the public stocks or funds of the United Kingdom, or upon government or real securities: AND WHEREAS some of the hereditaments comprised in the said indenture of settlement have been

Sale of part  
of settled  
property,  
and invest-

from time to time disposed of by way of sale or exchange under the powers in that behalf contained in the said indenture, and part of the moneys arising from such sales has been laid out and invested in the purchase of other hereditaments which have been conveyed to the uses of the said indenture of settlement, and the remainder thereof is represented by the sum of £—— £3 per cent. Consolidated Bank Annuities standing in the names of ——, the trustees of the said indenture, in the books of the governor and company of the Bank of England: AND WHEREAS the said D. B. is the first son of the said A. B. and C. his wife, and he attained the age of twenty-one years on the —— day of —— last: AND WHEREAS the said A. B. and D. B. have agreed that the said hereditaments and bank annuities shall be respectively disentailed for the purposes and in the manner herein-after expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, THE said A. B., as to his estate for life under the said indenture of settlement, AND the said D. B., as to the remainder in fee simple expectant on such estate for life, with the consent of the said A. B. as the protector of the settlement, do and each of them doth by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf grant unto the said E. F. and his heirs, ALL and singular the manor, messuages, lands, tenements, and hereditaments comprised in and settled by the hereinbefore recited indenture of settlement, except such of them as have been disposed of by way of sale or exchange as aforesaid, AND ALSO (by way of grant and not of exception) ALL other the hereditaments which by purchase, exchange, inclosure, or otherwise, have become and are now subject either at law or in equity to the uses of the said indenture, with their and every of their rights, members, and appurtenances: AND ALL the estate, right, title, interest, claim, and demand whatsoever of them the said A. B. and D. B., and each of them in and to the said premises: To HOLD the said premises (subject to the said yearly rent-charge of £—— by the said indenture of settlement limited to the said C. B. as aforesaid, and the powers and remedies for enforcing payment thereof, and subject also to the said term of 1000 years limited by the same indenture and the trusts thereof, but freed and discharged from the estate in tail male therein of the said D. B., and all remainders, estates, and powers to take effect after the

CONVEYANCE  
TO USES BY  
TENANT FOR  
LIFE AND  
TENANT IN  
TAIL.

ment of  
proceeds in  
Consols.

Agreement  
to disentail.

Witnessing  
part.  
Tenant for  
life and  
tenant in  
tail convey.

Parcels.

Habendum  
(subject to  
charges).



CONVEYANCE  
TO USES BY  
TENANT FOR  
LIFE AND  
TENANT IN  
TAIL.

To such uses  
as tenant  
for life and  
tenant in  
tail shall  
jointly  
appoint,  
and  
in default of  
appoint-  
ment, to  
uses subsist-  
ing under  
settlement.  
Assignment  
of stock.

Upon  
similar  
trusts

determination or in defeasance of such estate in tail male), unto the said E. F. and his heirs: TO SUCH USES, upon such trusts, and with and subject to such powers and provisions as the said A. B. and D. B. shall by any deed or deeds jointly appoint: AND IN DEFAULT of and until such appointment, and so far as any such appointment shall not extend, TO SUCH USES, upon such trusts, and with and subject to such powers and provisions as were subsisting in the said premises respectively immediately before the execution of these presents: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, THE said A. B. and D. B. do by this deed intended to be enrolled as aforesaid assign unto the said E. F., his executors, administrators, and assigns, THE said sum of £—— £3 per cent. Consolidated Bank Annuities, and all other (if any) the moneys, stocks, funds, and securities liable to be laid out in the purchase of lands to be settled to the uses of the said indenture of settlement, AND all the right, title, interest, claim, and demand whatsoever of the said A. B. and D. B. respectively therein and thereto, TO HOLD the said premises (freed and discharged from the estate in tail male of the said D. B. and all remainders, &c. (as before)), unto the said E. F., his executors, administrators, and assigns, UPON such trusts and with and subject to such powers and provisions as the said A. B. and D. B. shall by any deed or deeds jointly appoint: AND in default of and until such appointment, and so far as any such appointment shall not extend upon the trusts, and with and subject to the powers and provisions which were subsisting therein immediately before the execution of these presents.

IN WITNESS, &c.

#### No. VI.

BY TENANT  
IN TAIL IN  
REMAINDER  
WITH CON-  
SENT OF  
PROTECTOR  
TO USES.

CONVEYANCE of an ESTATE by a TENANT IN TAIL in remainder, with the consent of the TENANT FOR LIFE (subject to the uses by the SETTLEMENT limited to take effect prior to the ESTATE TAIL), to like uses as in the last Precedent.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN D. B. of, &c. (tenant in tail in remainder), of the first part, A. B. of, &c. (tenant for life), of the second part, and E. F. of, &c. (grantee to uses), of the third part (recite indenture whereby

*divers hereditaments therein described were settled to use of A. B. for life, with remainder to the first and other sons of A. B. in tail male, with remainder to C. B. for life, with remainder to the first and other sons of C. B. successively in tail male, with divers remainders over*): AND WHEREAS in exercise of powers in that behalf contained in the said indenture of settlement, some of the hereditaments therein comprised have been from time to time sold, and the moneys arising from such sales have been laid out in the purchase of other hereditaments which have been conveyed to the uses of the said indenture of settlement: [AND WHEREAS (a) in the schedule hereunder written are set forth the particulars as well of the hereditaments originally comprised in the said indenture of settlement which now remain unsold, as also of the hereditaments which have been purchased and conveyed to the uses of the said indenture as aforesaid]: AND WHEREAS the said A. B. has at present no issue male: AND WHEREAS the said C. B. died on the — day of —: AND WHEREAS the said D. B. is the first son of the said C. B. and he attained the age of twenty-one years on the — day of —: NOW THIS INDENTURE WITNESSETH, that in pursuance of an agreement in this behalf entered into between the said A. B. and D. B., THE said D. B., with the consent of the said A. B. as the protector of the settlement (testified by his executing these presents), doth by this deed intended to be enrolled in the High Court of Justice (Chancery division), pursuant to the statute in that behalf, grant unto the said E. F. and his heirs, ALL the messuages, lands, tenements, and hereditaments [described in the schedule hereunder written: AND ALL other (if any) the lands, tenements, and hereditaments] (b) now subject or liable at law or in equity to the uses and limitations of the hereinbefore recited indenture of settlement (*general words and all the estate, &c.*): TO HAVE AND TO HOLD the hereditaments and premises hereby granted, or expressed so to be (freed and discharged from the estate in tail male of the said D. B. therein, and from all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, but subject and without prejudice to all uses, estates, limitations, and charges by the said indenture of settlement limited or created, and to take effect

BY TENANT  
IN TAIL IN  
REMAINDER  
WITH CON-  
SENT OF  
PROTECTOR  
TO USES.

Recite  
settlement  
creating the  
entail.

Exercise of  
power of  
sale and  
exchange.

That settled  
heredita-  
ments are  
described  
in schedule.

Conveyance  
by tenant in  
tail with  
consent of  
protector.

Parcels.

Habendum  
(subject to  
prior  
estates).

(a) This recital may be omitted if it is not convenient to add a schedule.  
See the last Precedent.

(b) The words in brackets will be omitted, if there is no schedule.

BY TENANT  
IN TAIL IN  
REMAINDER  
WITH CON-  
SENT OF  
PROTECTOR  
TO USES.

To grantee.

To such  
uses as  
tenant for  
life and  
tenant in  
tail should  
appoint, and  
in default  
of ap-  
pointment  
to the uses  
of the  
settlement.

prior to the estate in tail male of the said D. B., and to all the powers and privileges annexed or belonging to such prior uses, estates, and limitations respectively, or exercisable during the continuance thereof respectively, unto the said E. F. and his heirs : NEVERTHELESS TO SUCH USES, upon such trusts, and with and subject to such powers and provisions as the said A. B. and D. B. shall by any deed or deeds jointly appoint : AND IN DEFAULT of and until such joint appointment, and so far as any such joint appointment shall not extend, To such and the same uses, upon such and the same trusts, and with and subject to such and the same powers and provisions as were subsisting in the said hereditaments and premises immediately before the execution of these presents.

IN WITNESS, &c.

## No. VII.

SURRENDER  
OF COPY-  
HOLDS TO  
BAR ENTAIL.

### SURRENDER by TENANTS *in* COMMON *in* TAIL of COPYHOLDS to BAR the ENTAIL.

Tenants in  
common in  
tail  
surrender

parcels

to use of  
sur-  
renderors  
as tenants

*The Manor of ———* } BE IT REMEMBERED, that on  
*in the County of ———* } the ——— day of ———, A. B. of, &c., and  
C. D. of, &c. (being the two only daughters of X. Y., late of, &c., deceased), came before L. M. of, &c., steward of the said manor, and for the purpose of barring their respective estates tail in the hereditaments hereinafter mentioned, and all remainders, estates, and powers to take effect after the determination, or in defeasance of such estates tail respectively, did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of his steward, according to the custom thereof, ALL THAT, &c. (*parcels*), To which hereditaments the said X. Y. was admitted tenant at a court holden in and for the said manor on the ——— day of ———, 18—, and which hereditaments were (with other hereditaments) devised by the will of the said X. Y., dated the ——— day of ———, 18—, unto his daughters as tenants in common in tail, with remainders over, AND all other (if any) the copyhold hereditaments held of the said manor of or to which the said A. B. and C. D. are seised or entitled as tenants in common in tail under the said will or otherwise : TOGETHER WITH, &c. (*general words*), To THE USE of the said A. B. and C. D., their heirs and assigns, in equal

shares as tenants in common, according to the custom of the said manor, by and under the rents, suits, and services therefor due, and of right accustomed, freed and discharged from the respective estates tail of them the said A. B. and C. D., and all remainders, estates and powers to take effect after the determination, or in defeasance of such estates tail respectively.

SURRENDER  
OF COPY-  
HOLDS TO  
BAR ENTAIL.  
in common  
in fee  
free from  
estates tail,  
&c.

This surrender was taken and  
accepted the day and year } (Signed) L. M. (steward).  
above written, by me

No. VIII.

CONSENT of PROTECTOR of an ESTATE TAIL in remainder in COPYHOLDS by a DEED, to be entered on the Court Rolls for the purpose of enabling the Tenant to bar the ENTAIL

CONSENT OF  
PROTECTOR.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c. (tenant for life and protector of the settlement), sends greeting: WHEREAS C. D., late of, &c., deceased, duly made his will dated the — day of —, and thereby gave all his copyhold or customary hereditaments, situate at —, and held of the manor of —, unto the said A. B. and his assigns for his life, and from and after his decease to E. F. in tail male, with divers remainders over: AND WHEREAS the said C. D. died on the — day of —, without having revoked or altered his said will: AND WHEREAS the said A. B. has agreed to give his consent to the disposition by the said E. F. of the copyhold or customary hereditaments devised by the said will in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that in pursuance of the said agreement in this behalf, the said A. B., as protector of the settlement created by the said will of the said C. D., doth by these presents consent to any and every surrender, disposition, or assurance which the said E. F. may make or execute at any time or times hereafter, of the said copyhold or customary hereditaments so devised as aforesaid, for barring the estate tail of the said E. F. in the same hereditaments, and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, and for limiting the same hereditaments (subject and with-

Recite  
devise to  
protector  
for life,  
remainder  
to tenant in  
tail.

Protector is  
desirous of  
giving his  
consent.

Protector  
consents to  
the estate  
tail being  
barred

CONSENT OF  
PROTECTOR.

out prejudice to the said estate for life therein of the said A. B., and all powers and privileges annexed to such estate for life), to the use of the said E. F., his heirs and assigns for ever, or otherwise as he the said E. F. may think proper.

IN WITNESS, &c.

### No. IX.

SURRENDER  
TO BAR  
ESTATE TAIL  
IN RE-  
MAINDER IN  
COPYHOLDS.

SURRENDER *to bar an ESTATE TAIL in REMAINDER in COPYHOLDS, the Protector's consent having been obtained by Deed.*

Devise to  
protector  
for life,  
remainder  
to tenant  
in tail male.

Death of  
testator.

Admission  
of pro-  
tector.

Deed poll  
giving  
protector's  
consent.

*The Manor of* — } WHEREAS, at a court holden in and  
*in the county of* — } for this manor on the — day of —,  
C. D., late of, &c., was admitted tenant to the copyhold hereditaments hereinafter described: AND WHEREAS the said C. D. duly made his will dated the — day of —, and thereby gave and devised all his copyhold and customary hereditaments held of the said manor unto A. B. and his assigns during his life, and from and after his decease to E. F. in tail male, with divers remainders over: AND WHEREAS the said C. D. died on the — day of —, without having revoked or altered his said will: AND WHEREAS, at a court holden for the said manor of —, on the — day of —, the said A. B. was duly admitted tenant of the copyhold hereditaments hereinafter described as tenant for life under the said will: AND WHEREAS by a deed poll under the hand and seal of the said A. B., dated the — day of —, the said A. B., as protector of the settlement created by the said will, did give his consent to any and every surrender, disposition, or assurance which the said E. F. might make or execute at any time or times thereafter of the said copyhold or customary hereditaments, for barring the estate tail of the said E. F. in the same hereditaments, and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, and for limiting the said hereditaments (subject and without prejudice to the said estate for life therein of the said A. B., and all powers and privileges annexed to such estate for life), to the use of the said E. F., his heirs and assigns, for ever, or otherwise as he the said E. F. might think proper, according to the custom of the said manor: NOW BE IT REMEMBERED,

Surrender  
accordingly

that the said E. F., on the — day of —, came before L. M. of, &c., steward of the said manor, and did out of court surrender into the hands of the lord of the said manor, by the hands and acceptance of the said steward, according to the custom of the said manor (the said recited deed poll being first produced to the steward) (a), ALL THAT, &c. (*parcels*), To which hereditaments and premises the said A. B. was admitted on the — day of —, as aforesaid, and all other (if any) the copyhold hereditaments held of the said manor, of or to which the said E. F. is seised or entitled as tenant in tail under the said will or otherwise, TOGETHER WITH, &c. (*general words*), To THE USE of the said E. F., his heirs and assigns, for ever, at the will of the lord, according to the custom of the said manor, at and under the rents and services, therefor due and of right accustomed, subject nevertheless and without prejudice to the said estate for life of the said A. B., and all powers and privileges annexed to such estate, but freed and discharged from the estate tail of the said E. F., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail.

SURRENDER  
TO BAR  
ESTATE TAIL  
IN RE-  
MAINDER IN  
COPYHOLDS.  
to bar estate  
tail.

This surrender was accepted }  
and taken the day and year } (L. M.)  
first above written, by me } Steward of the manor.

No. X.

DISENTAILING ASSURANCE *by an* EQUITABLE TENANT  
in TAIL of COPYHOLDS.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*tenant in tail*), of the one part, and C. D., of, &c., and E. F., of, &c. (*trustees*), of the other part (*Recite will whereby the copyhold hereditaments were devised unto and to the use of the said C. D. and E. F., their heirs and assigns, upon trusts for M. N. for his life, with remainder in trust for the said A. B. and the heirs male of his body.—Death of testator without having altered his said will, and probate thereof*): AND WHEREAS the said M. N. hath lately

DISENTAIL-  
ING ASSUR-  
ANCE BY  
EQUITABLE  
TENANT IN  
TAIL OF  
COPYHOLDS.  
Parties.

(a) If the protector gives his consent in person, the following words should be introduced: "With the consent of the said A. B., protector of the settlement made by the said will, to the steward at the same time given by the said A. B."

Death of  
tenant for  
life.

DISENTAIL-  
ING ASSUR-  
ANCE BY  
EQUITABLE  
TENANT IN  
TAIL OF  
COPYHOLDS.

Desire to  
bar entail.

Grant by  
tenant in  
tail to  
trustees in  
trust for  
tenant in  
tail in fee  
simple.

died: AND WHEREAS the said A. B. is desirous of barring his equitable estate tail in the said copyhold or customary hereditaments devised by the said recited will as aforesaid, and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail, and of acquiring an estate in customary fee simple in the same hereditaments: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed intended to be entered on the court rolls of the said manor, grant unto the said C. D. and E. F., their heirs and assigns, ALL, &c. (*copyhold parcels*): AND ALL OTHER the copyhold hereditaments (if any) held of the said manor, to which the said A. B. is entitled as tenant in tail in equity under the said will or otherwise (*general words, and all the estate, &c.*): To HOLD the same unto the said C. D. and E. F., their heirs and assigns, To the intent that they may henceforth stand seised of and interested in the same, IN TRUST for the said A. B., his heirs and assigns for ever, freed and absolutely discharged of and from the said estate tail of the said A. B., and all remainders, estates, and powers, to take effect after the determination or in defeasance of such estate tail.

IN WITNESS, &c.

### No. XI.

#### DEED by TENANT in TAIL in REMAINDER to create a BASE FEE.

BY TENANT  
IN TAIL IN  
REMAINDER  
TO CREATE A  
BASE FEE

Parties.

That tenant  
in tail  
desires to  
convert his  
estate tail  
into a base  
fee.

Witnessing  
part.

Tenant in  
tail grants  
parcels

to grantee

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*tenant in tail*), of the one part, and C. D. of, &c. (*grantee*), of the other part (*Recite will devising hereditaments to X. Y. for life, with remainder to A. B. in tail, with remainder over*): AND WHEREAS the said A. B. is desirous of barring his estate tail in remainder of the said hereditaments and of converting the same into a base fee: NOW THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed, intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf, grant unto the said C. D. and his heirs, ALL, &c. (*parcels*), and all other (if any) the hereditaments of or to which the said A. B. is seised or entitled for an estate tail in remainder under the said will: TOGETHER WITH, &c. (*general words, and all the estate, &c.*): To HAVE AND TO

HOLD the hereditaments and premises hereby granted, or expressed so to be (subject to the said estate for life of the said X. Y. therein), unto the said C. D. and his heirs, To the use of the said A. B., his heirs and assigns, freed and discharged from the estate tail of the said A. B., and to the intent that the same may be converted into a base fee.

BY TENANT  
IN TAIL IN  
REMAINDER  
TO CREATE A  
BASE FEE.

(subject to  
estate for  
life),  
to use of  
grantor for  
a base fee.

IN WITNESS, &c.

No. XII.

DEED to ENLARGE a BASE FEE into an ESTATE in FEE  
SIMPLE ABSOLUTE (by Indorsement on last Precedent).

DEED TO  
ENLARGE  
BASE FEE.

THIS INDENTURE, made the — day of —, BETWEEN the within-named A. B. (*owner of base fee*), of the one part, and the within-named C. D. (*grantee*), of the other part: WHEREAS the within-named X. Y. (*tenant for life*) died on the — day of — : AND WHEREAS the said A. B. is desirous of enlarging the base fee into which his estate tail was conveyed by the within-written indenture into an estate in fee simple absolute: NOW

Parties.

Death of  
tenant for  
life.

That owner  
of base fee  
is desirous  
of enlarging  
same.

THIS INDENTURE WITNESSETH, that the said A. B. doth by this deed intended to be enrolled in the High Court of Justice (Chancery division) pursuant to the statute in that behalf, grant and confirm unto the said C. D. and his heirs, THE hereditaments and premises comprised in and granted by the within-written indenture, or expressed so to be (*and all the estate, &c.*): To

Witnessing  
part.

HOLD the same unto the said C. D. and his heirs, To THE USE of the said A. B., his heirs and assigns, for ever, FREED AND DISCHARGED from all remainders, estates, and powers to take effect after the determination or in defeasance of the base fee into which the estate tail of the said A. B. was converted by the within-written indenture, and to the intent that such base fee may be enlarged into an estate in fee simple absolute.

Owner of  
base fee  
grants  
parcels

to grantee  
to use of  
grantor in  
fee simple,  
free from  
remainders,  
&c.

IN WITNESS, &c.



## PARTITION.

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### No. I.

BY CO-  
HEIRESESSES.

DEED of PARTITION by Three Co-HEIRESESSES, one of whom  
pays a SUM by way of Equality of PARTITION.

Parties.

Recite  
conveyance  
to intestate,  
and his  
death,  
leaving  
co-heiresses.  
Agreement  
for par-  
tition,

and for  
payment of  
a sum for  
equality of  
partition.

Witnesseth.

Considera-  
tion.

Conveyance  
by co-  
heiresesses  
of heredita-  
ments,

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c., spinster (*one daughter and co-heiress*), of the first part, C. D. of, &c. spinster (*another daughter and co-heiress*), of the second part, E. F. of, &c. spinster (*third daughter and co-heiress*), of the third part, and G. H. of, &c. (*grantee to uses*), of the fourth part (*Recite conveyance of property comprised in the schedules to these presents to M. N., and his decease intestate, leaving no son, but leaving the said A. B., C. D., and E. F., his only daughters and co-heiresses*): AND WHEREAS it was lately agreed between the said A. B., C. D., and E. F., that a partition should be made between them of the hereditaments comprised in the several schedules hereunder written, and that the entirety of the hereditaments comprised in the first schedule should be taken in severalty by the said A. B., and that the entirety of the hereditaments comprised in the second schedule should be taken in severalty by the said C. D., and that the entirety of the hereditaments comprised in the third schedule should be taken in severalty by the said E. F.: AND it was also agreed that the said E. F. should pay for equality of partition the sum of £200 to the said A. B. and C. D. in equal shares: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the sum of £200 to the said A. B. and C. D. in equal shares paid by the said E. F. on or immediately before the execution of these presents (*the receipt whereof, &c.*), and in consideration of all and singular other the premises, THE said A. B., C. D., and

E. F., as to their several undivided third parts or shares, do hereby grant unto the said G. H. and his heirs, ALL and singular the several pieces or parcels of land and other hereditaments described and comprised in the first, second, and third schedules hereunder written (*general words, and all the estate, &c.*), To HAVE AND TO HOLD the hereditaments and premises hereby granted, or expressed so to be, unto the said G. H. and his heirs, To THE USES following (that is to say): AS TO the hereditaments comprised in the first schedule hereunder written, with their appurtenances, To the use of the said A. B., her heirs and assigns, for ever: AS TO the hereditaments comprised in the second schedule hereunder written, with their appurtenances, To the use of the said C. D., her heirs and assigns, for ever: AND AS TO the hereditaments comprised in the third schedule hereunder written, with their appurtenances, To the use of the said E. F., her heirs and assigns, for ever: AND EVERY OF THEM the said A. B., C. D., and E. F., so far as regards her one undivided third part of the said hereditaments, doth hereby for herself, her heirs, executors, and administrators, covenant with the said G. H., and his heirs, that notwithstanding any act, deed, or thing by them the said covenanting persons respectively done or executed, or knowingly suffered to the contrary, they the said covenanting persons respectively now have good right to grant the said hereditaments and premises to the uses and in manner aforesaid, AND THAT the said hereditaments and premises shall go and remain to the uses hereinbefore declared concerning the same respectively, and shall from time to time, and at all times hereafter, be peaceably and quietly possessed and enjoyed, and the rents and profits thereof, and of every part thereof respectively, be received and taken accordingly, without any lawful eviction, interruption, claim, or demand whatsoever, from or by the said covenanting persons respectively, or any person or persons lawfully or equitably claiming from, under, or in trust for them respectively: AND THAT free from all incumbrances made, occasioned, or suffered by the said covenanting persons respectively, or any person or persons lawfully or equitably claiming as aforesaid: AND FURTHER, that they the said covenanting persons respectively, and all persons having or lawfully or equitably claiming any estate or interest in the said hereditaments and premises or any part thereof, from, under, or in trust for them respectively, shall and will, from time to time,

BY CO-  
HEIRESSES.

Habendum

Hereditaments in first schedule to one co-heiress. Hereditaments in second schedule to another co-heiress. And hereditaments in third schedule to the third co-heiress. Covenants by parties as to their respective shares.

For right to convey:

for quiet enjoyment:

freedom from incumbrances

and for further assurance.

BY CO-  
HEIRESSES.

and at all times hereafter, at the request and cost of any person or persons interested in the said hereditaments and premises under the uses hereinbefore declared, do and execute, or cause to be done and executed, all such acts, deeds, and things whatsoever, for further and more perfectly assuring the said hereditaments and premises, and every part thereof, to the uses and in manner aforesaid as shall or may be reasonably required.

IN WITNESS, &c.

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THE FIRST SCHEDULE REFERRED TO IN THE ABOVE-  
WRITTEN INDENTURE.

---

THE SECOND SCHEDULE REFERRED TO IN THE ABOVE-  
WRITTEN INDENTURE.

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THE THIRD SCHEDULE REFERRED TO IN THE ABOVE-  
WRITTEN INDENTURE.

## No. II.

OF FREE-  
HOLDS, COPY-  
HOLDS, AND  
LEASEHOLDS

PARTITION of FREEHOLDS and COPYHOLDS and  
LEASEHOLDS by THREE PERSONS who are interested  
in the FREEHOLDS and COPYHOLDS as coparceners,  
and in the LEASEHOLDS as TENANTS IN COMMON.  
A part of the FREEHOLDS and COPYHOLDS is allotted  
to each, and the TWO LEASEHOLD HOUSES are  
allotted equally to two out of the three TENANTS IN  
COMMON at an apportioned RENT in respect of each  
HOUSE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*one daughter*), of the first part, C. D. of, &c. (*another daughter*), of the second part, E. F. of, &c. (*the other daughter*), of the third part, and G. H., of, &c. (*grantee*), of the fourth part : WHEREAS L. M., late of, &c., being seised of the freehold hereditaments comprised in the first, second, and third schedules hereunder written, for an estate of inheritance in fee simple in possession, and being seised of or entitled to the copyhold hereditaments

Testator's  
seisin of  
freeholds  
and copy-  
holds ;  
and his  
death in-  
testate,

comprised in the fourth, fifth, and six schedules hereunder written for a customary estate of inheritance in fee simple in possession according to the custom of the manor of —, of which the same are holden, died on the — day of —, intestate, leaving the said A. B., C. D., and E. F., his only daughters and co-heiresses, him surviving: AND WHEREAS by an indenture dated the — day of —, and made between (*parties*), the two messuages or dwelling-houses situate —, and being respectively Nos. —, were demised unto the said A. B., C. D., and E. F., their executors, administrators, and assigns, as tenants in common for a term of fourteen years, at the yearly rent of £10, and subject to the covenants and conditions therein contained, and on the part of the lessees, their executors, administrators, and assigns, to be observed and performed: AND WHEREAS it was lately agreed between the said A. B., C. D., and E. F., that a partition should be made between them of the said freehold, copyhold and leasehold hereditaments, and that the freehold and copyhold hereditaments comprised in the said first and fourth schedules respectively should be taken in severalty by the said A. B.; that the freehold and copyhold hereditaments comprised in the said second and fifth schedules respectively, and the said leasehold messuage and premises being No. —, should be taken in severalty by the said C. D.; and the freehold and copyhold hereditaments comprised in the said third and sixth schedules respectively, and the said leasehold messuage and premises being No. —, should be taken in severalty by the said E. F.: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement in this behalf, they the said A. B., C. D., and E. F., according to their several shares and interests, do hereby grant unto the said G. H. and his heirs, ALL and singular the messuages or tenements, lands and hereditaments described and comprised in the first, second and third schedules hereunder written respectively (*general words and all the estate*): TO HOLD the same unto the said G. H. and his heirs, to the uses following, that is to say, AS TO THE hereditaments comprised in the said first schedule, with their appurtenances, To the use of the said A. B., her heirs and assigns: AS TO THE hereditaments comprised in the said second schedule, with their appurtenances, To the use of the said C. D., her heirs and assigns: AND AS TO THE hereditaments comprised in the said third schedule, with their appurtenances, To the use

OF FREE-  
HOLDS, COPY-  
HOLDS, AND  
LEASEHOLDS

leaving his  
three  
daughters  
co-heiresses.

Lease of two  
messuages  
to three  
daughters  
as tenants  
in common.

Agreement  
for par-  
tition.

Grant of  
freeholds.

As to  
certain  
heredita-  
ments  
to one  
daughter  
as to other  
heredita-  
ments to  
another  
daughter;  
as to other  
heredita-  
ments to

OF FREE-  
HOLDS, COPY-  
HOLDS, AND  
LEASEHOLDS.

another  
daughter.

Covenants  
by daughter  
to surrender  
copyholds.

Assignment  
by two  
daughters of  
their shares  
in one  
leasehold  
messuage,

to the other  
daughter at  
apportioned  
rent.

of the said E. F., her heirs and assigns : AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the aforesaid agreement in this behalf, THE said C. D. and E. F., do hereby for themselves respectively and their respective heirs, executors, and administrators, covenant with the said A. B. and her heirs, that they the said C. D. and E. F. respectively, and their respective heirs, shall and will, at the cost of the said A. B., her heirs and assigns, at or before the next court to be holden for the said manor of —, surrender into the hands of the lord or lady of the said manor, ALL those the two undivided third parts or shares of the said C. D. and E. F. respectively of and in ALL AND SINGULAR the copyhold hereditaments comprised in the fourth schedule hereunder written (*general words*), To the use of the said A. B., her heirs and assigns, at the will of the lord of the said manor according to the custom thereof, by and under the rents, suits, and services therefor due and of right accustomed (*Similar covenants by A. B. and E. F. with C. D. to surrender their shares in the copyhold hereditaments comprised in the fifth schedule to the use of C. D., and by A. B. and C. D. with E. F. to surrender their shares in the copyhold hereditaments comprised in the sixth schedule to the use of E. F.*): AND THIS INDENTURE ALSO WITNESSETH, that in pursuance of the aforesaid agreement in this behalf, the said A. B. and C. D. do hereby assign unto the said E. F., her executors, administrators, and assigns, ALL those the two undivided third parts or shares of the said A. B. and C. D. respectively, of and in ALL, &c. (*one of the messuages comprised in the indenture of Lease*): AND ALL THE estate, right, title, &c., of them the said A. B. and C. D. respectively in the said premises, and every part thereof: To HOLD the same unto the said E. F., her executors, administrators, and assigns, for all the residue now unexpired of the said term of fourteen years, to the intent that she the said E. F., her executors, administrators, and assigns, may henceforth be possessed of the entirety of the said messuage and premises for the residue of the said term, subject to the payment of the yearly rent of £5, being one moiety of the said rent of £10 reserved by the said recited indenture of lease, and to the covenants and conditions in the said indenture of lease contained, and on the part of the lessee, her executors, administrators, and assigns, to be observed and performed respectively, so far as the same relate to the said messuage and premises : AND THIS

INDENTURE ALSO WITNESSETH, that in pursuance of the aforesaid agreement in this behalf, THE said A. B. and E. F. do hereby assign unto the said C. D., her executors, administrators, and assigns, ALL AND SINGULAR the two undivided third parts or shares of the said A. B. and E. F. respectively, of and in ALL, &c. *(the other of the messuages comprised in the indenture of lease):* AND ALL THE ESTATE, &c.: TO HOLD the same unto the said C. D., her executors, administrators, and assigns, for all the residue now unexpired of the said term of fourteen years, to the intent that she and they may be henceforth possessed of the entirety of the last-mentioned messuage and premises for the residue of the said term, subject to the payment of the yearly rent of £5, &c. *(as before,—Covenants for title by A. B., C. D., and E. F. with G. H. as to the freeholds):* AND EACH OF THEM the said C. D. and E. F., as to her one undivided third part or share of and in the said copyhold hereditaments comprised in the fourth schedule hereunder written, doth hereby for herself, her heirs, executors, and administrators, covenant with the said A. B., her heirs and assigns, THAT notwithstanding any act, deed, or thing by them the said covenanting persons respectively done or executed, or knowingly suffered to the contrary, they the said covenanting persons respectively now have good right to surrender two undivided third parts or shares of and in the said copyhold hereditaments comprised in the fourth schedule hereunder written, to the use of the said A. B., her heirs and assigns, in manner aforesaid: AND THAT the said A. B., her heirs and assigns, shall and may at all times hereafter peaceably and quietly possess and enjoy the same parts or shares of and in the said copyhold hereditaments, without any lawful suit, eviction, interruption, claim or demand whatsoever from or by the said C. D. and E. F. respectively, or any person or persons lawfully or equitably claiming from, under, or in trust for them respectively: AND THAT free from all incumbrances whatsoever made, occasioned, or suffered by the said covenanting persons respectively, or any person or persons lawfully or equitably claiming as aforesaid: AND FURTHER, that they the said covenanting persons respectively, and all persons having or lawfully or equitably claiming any estate or interest in the said parts or shares of the said copyhold hereditaments, from, under or in trust for them respectively, shall and will, from time to time and at all times hereafter, at the request and cost of the said

OF FREE-  
HOLDS, COPY-  
HOLDS, AND  
LEASEHOLDS.

Assignment  
by two  
daughters of  
their shares  
in other  
leasehold  
house to  
the other  
daughter at  
apportioned  
rent.

Covenants  
for title as  
to copy-  
holds.

OF FREE-  
HOLDS, COPY-  
HOLDS, AND  
LEASEHOLDS.

Covenants  
for title as to  
leaseholds.

Covenant  
by one  
daughter  
to pay rent  
and observe  
covenants in  
respect of  
leasehold  
premises  
taken by  
her.

A. B., her heirs or assigns, do and execute, or cause to be done and executed, all such acts, deeds, and things whatsoever for further and more perfectly assuring the same parts or shares respectively to the use of the said A. B., her heirs and assigns, as shall or may be reasonably required (*Similar covenants for title by A. B. and E. F. with C. D. as to the copyholds comprised in the fifth schedule, and by A. B. and C. D. with E. F. as to the copyholds comprised in the sixth schedule*): AND EACH of them the said A. B. and E. F. as to her one undivided third part or share of and in the said leasehold messuage and premises, being No. —, &c., doth hereby for herself, her heirs, executors, and administrators, covenant with the said C. D., her executors, administrators, and assigns, THAT notwithstanding, &c. (*Covenants for title as to the shares of A. B. and E. F. in this leasehold messuage, and similar covenants for title by A. B. and C. D. with E. F. as to the shares of A. B. and C. D. in the other leasehold messuage*): AND THE SAID C. D. doth hereby for herself, her heirs, executors, administrators and assigns, covenant with the said A. B. and E. F., and each of them, and the executors, administrators, and assigns of them and each of them, THAT SHE the said C. D., her executors, administrators, and assigns, shall and will at all times hereafter during the said term of fourteen years granted by the said indenture of lease, pay the yearly rent of £5 in respect of the said messuage and premises, No. —, &c., and observe and perform the covenants and conditions in the said indenture of lease contained, and which henceforth on the part of the lessee, her executors, administrators, and assigns, ought to be observed and performed, so far as the same relate to the last-mentioned messuage and premises; and shall and will at all times hereafter keep indemnified the said A. B. and E. F. and each of them, and the heirs, executors, and administrators, estate and effects of them and each of them, from and against the payment of the said rent of £5, and the performance of the said covenants and conditions relating to the last-mentioned messuage and premises, and from and against all actions, costs, charges, damages, claims, and demands whatsoever for or on account of the same, or in anywise relating thereto: AND ALSO that in case the said A. B. and E. F., or either of them, or the executors, administrators, or assigns of them or either of them, shall at any time or times hereafter pay or incur any sum or sums of money, costs, charges, damages,

or expenses for or on account of the said yearly rent of £5, covenants and conditions hereinbefore covenanted to be paid, observed, and performed by the said C. D., her heirs, executors, administrators, and assigns, as aforesaid, or any of them, then and in such case, and so often as the same shall happen, it shall be lawful for the person or persons by whom such sum or sums of money, costs, charges, damages, or expenses shall be paid or incurred as aforesaid, into and upon the last-mentioned messuage and premises to enter and distrain for the same, and to dispose of the distress or distresses then and there found, according to law, as landlords may for rents reserved upon leases for years, to the intent that thereby he, she, or they shall and may be fully paid and satisfied all and every such sums and sum of money, costs, charges, damages and expenses, as aforesaid: AND ALSO that in case and so often as aforesaid it shall be lawful for the person or persons, by whom such sum or sums of money, costs, charges, damages, or expenses, shall be paid or incurred as aforesaid, to enter into and upon and to hold all or any part of the last-mentioned messuage and premises, and to receive the rents and profits thereof for her, his, and their own use until she, he, or they shall thereby or otherwise be fully paid and satisfied the same (*Similar covenants by E. F. to pay rent and observe covenants in respect of the premises taken by her, and grant to A. B. and C. D. of similar powers of distress and entry for securing the payment of such rent and observance of covenants*).

IN WITNESS, &c.

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THE FIRST SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

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THE SECOND SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

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THE THIRD SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

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THE FOURTH SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.



OF FREE-  
HOLDS,  
COPYHOLDS,  
AND LEASE-  
HOLDS.

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THE FIFTH SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

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THE SIXTH SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

## BONDS (a).

### No. I.

#### BOND *for* PAYMENT of MONEY *by* INSTALMENTS.

KNOW ALL MEN by these presents, that I, A. B. of, &c. (*obligor*), am held and firmly bound to C. D. of, &c. (*obligee*), in the sum of £—— (*twice the amount of the sum to be repaid*), to be paid to the said C. D., or to his executors, administrators, or assigns, FOR WHICH payment to be well and truly made, I bind myself, my heirs, executors, and administrators, firmly by these presents. SEALED with my seal: DATED this —— day of ——, in the year 18——.

FOR  
PAYMENT OF  
MONEY BY  
INSTAL-  
MENTS.

Bond.

NOW THE CONDITION of the above-written bond or obligation is such, that if the above-bounden A. B., his heirs, executors, or administrators, shall pay unto the said C. D., his executors, administrators, or assigns, the sum of £—— by the instalments following (that is to say), the sum of £——, part thereof, on the —— day of —— now next ensuing; the sum of £——, other part thereof, on the —— day of ——, 18——; and the sum of £——, residue thereof, on the —— day of —— in the same year, and if the said A. B., his heirs, executors, or administrators, shall at the several times hereinbefore appointed for payment of the said several instalments of the said sum of

Condition  
of Bond.

(a) By the recent Stamp Act (33 & 34 Vict. c. 97), the stamp duties chargeable on bonds for payment or repayment of money or the transfer or retransfer of stock, are the same as on a mortgage for the same purposes. (See Stamps on Mortgages, vol. i.) The stamp duties chargeable where the bond is to secure an annuity, except upon the original creation thereof by way of sale are stated under the head of Stamps on Settlements, *supra*, p. 198. A bond of any kind not specifically charged with any duty is liable to a 10s. stamp, unless the amount limited to be recoverable does not exceed £300, in which case the duty will be the same *ad valorem* duty as on a bond for the amount limited.

FOR  
PAYMENT OF  
MONEY BY  
INSTAL-  
MENTS.

£——, pay unto the said C. D., his executors, administrators, or assigns, interest for the said sum of £——, or such part thereof as for the time being shall remain unpaid, after the rate of £—— for every £100 by the year (such interest to commence and be computed from the day of the date of the above-written bond or obligation), THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

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No. II.

TO SECURE  
ANNUITY.

BOND for SECURING *the* PAYMENT of an ANNUITY (a).

(*BOND from A. B. (obligor), to C. D. (obligee), in the sum of £——, supra, p. 579.*) WHEREAS the above-bounden A. B. lately agreed with the said C. D. for the sale to him of an annuity of £——, during his life, for the sum of £——, such annuity to be secured by the bond of the said A. B.: AND WHEREAS, in pursuance of the said agreement, the said C. D. has paid to the said A. B. the sum of £——, and the said A. B. has executed the above-written bond.

Condition  
of Bond.

NOW THE CONDITION of the above-written bond is such that if the said A. B., his heirs, executors, or administrators, shall pay unto the said C. D. and his assigns during his life, one annuity or yearly sum of £—— by equal quarterly portions, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, the first quarterly portion of the said annuity to be paid on the —— day of ——, then the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

(a) The stamp duty on this bond will be the same *ad valorem* duty as on a conveyance in consideration of the purchase-money to be paid for the annuity. (See 33 & 34 Vict. c. 97, s. 75.)

## No. III.

BOND of the VENDOR of an ADVOWSON for the payment to the purchaser of an ANNUAL SUM equal to INTEREST on the purchase-money until a VACANCY.

BY  
VENDOR OF  
ADVOWSON  
FOR  
PAYMENT OF  
ANNUAL  
SUM UNTIL  
VACANCY.

(BOND from A. B. (vendor), to C. D. in the penal sum of £2000.) WHEREAS the said A. B. lately agreed with the said C. D. for the sale to him of the advowson of the rectory or parish church of —, and of an annuity of £80 to be paid to the said C. D., his executors, administrators, or assigns, until the said benefice should become vacant, and to be secured by the bond of the said A. B., at the price of £2000: AND WHEREAS in pursuance of the said agreement, the said C. D. has paid to the said A. B. the said purchase-money of £2000, and in consideration thereof the said A. B. has granted the said advowson unto and to the use of the said C. D. his heirs and assigns by an indenture bearing even date with the above-written bond, and has also executed the above-written bond: NOW THE CONDITION of the above-written bond is such that if the said A. B., his heirs, executors, or administrators, shall pay unto the said C. D., his executors, administrators, or assigns, the annual sum of £80, until the said benefice shall become vacant by the death, resignation, or deprivation of X. Y., the present incumbent thereof, or if the said X. Y. shall be promoted to a bishopric, and the crown shall thereupon present to the said benefice, then, until the death, resignation, or deprivation of the person presented by the crown as aforesaid, the said annual sum to be paid by equal half-yearly payments on the — day of — and the — day of —, the first of such payments to be made on the — day of — next, then and in such case the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

Recite  
agreement  
for sale of  
advowson  
and annual  
sum.

Payment of  
purchase  
money and  
advowson.

Condition of  
Bond

## No. IV.

TO  
PURCHASER  
TAKING  
DOUBTFUL  
TITLE.

BOND *for quiet ENJOYMENT given by VENDOR to PURCHASER, taking a doubtful TITLE.*

Recite conveyance of property to obligee,

and circumstances connected with the title of obligor.

Agreement for Bond.

Condition of Bond.

(*BOND from A. B. (vendor), to C. D. (purchaser), in the penal sum of £——.*) WHEREAS by an indenture, bearing even date with these presents and made between the above-bounden A. B. of the first part, the said C. D. of the second part, and E. F. of the third part, for the consideration therein mentioned, ALL, &c. (*parcels*), have been conveyed and assured to such uses as the said C. D. by any deed or deeds, &c. (*dower uses*): AND WHEREAS the hereditaments assured by the said indenture were formerly the property of G. H., and were conveyed in exchange by him to W. M., late of, &c., deceased, and his heirs, by an indenture dated, &c., and made, &c., and the title of the said A. B. to the said hereditaments is derived under the will of the said W. M., which bears date the —— day of ——, and was proved, &c., and under an indenture of appointment, dated the —— day of ——, being an appointment to him the said A. B., under a power in the said will contained: AND WHEREAS, previously to the execution of the said indenture of even date with these presents it was stipulated and agreed that in addition to the ordinary covenants for title contained in the said indenture bearing even date herewith the said A. B. should, for the satisfaction and indemnity of the said C. D., execute the above-written bond or obligation, subject to the condition hereinafter contained: NOW THE CONDITION of the above-written bond or obligation is such, that if the said C. D., his appointees, heirs, or assigns, shall from time to time, and at all times hereafter, hold, possess, and enjoy, the hereditaments comprised in and assured by the said indenture of even date with these presents, or expressed so to be, and every part thereof, and receive and take the rents and profits of the same, and every part thereof, for his and their own use, without any lawful let, suit, trouble, eviction, claim or demand whatsoever of, from, or by any person or persons whomsoever, and free and clear of and from all adverse estates, titles, liens, charges,

and incumbrances whatsoever, THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

TO  
PURCHASER  
TAKING  
DOUBTFUL  
TITLE.

## No. V.

BOND of INDEMNITY by a VENDOR to a PURCHASER on  
account of the LOSS of certain TITLE DEEDS.

OF  
INDEMNITY  
BY VENDOR  
FOR LOSS OF  
TITLE  
DEEDS.

(BOND from A. B. (obligor), to C. D. (obligee), in the penal sum of £——.) *Recite conveyance to C. D. (purchaser):* AND WHEREAS certain indentures of lease and release, dated the —— day of ——, and made between, &c. (*parties*), whereby the hereditaments comprised in the said indenture of even date herewith were (as is represented by the said A. B. conveyed to the said A. B. in fee simple, have been diligently sought for by the said A. B., but cannot be found : AND WHEREAS previously to the execution of the said indenture of even date herewith, it was agreed that for the satisfaction and indemnity of the said C. D., and in addition to the ordinary covenants for title contained in the said indenture, the said A. B. should execute the above-written bond subject to the condition hereinafter contained : NOW THE CONDITION of the above-written bond or obligation is such, that if the said A. B., his heirs, executors, or administrators, do and shall from time to time and at all times hereafter save harmless and keep indemnified the said C. D., his heirs and assigns, from and against all actions, losses, costs, charges, expenses, claims, and demands whatsoever in respect of the said hereditaments and premises comprised in the said recited indenture of even date herewith to which he or they would not have been subject or liable if the said indentures of lease and release of the —— and —— days of —— (being an absolute conveyance of the said hereditaments to the said A. B. in fee simple) had been duly delivered to the said C. D. upon the completion of the purchase, and in particular from and against all actions, losses, costs, charges, expenses, claims, and demands whatsoever to which he or they is or are, or shall or may become subject or liable in case it shall appear that the said indentures of lease and release are not in effect an absolute conveyance of all the said hereditaments to the said A. B. for

*Recite loss of indentures,*

and agreement for indemnity.

Condition of Bond.

OF  
INDEMNITY  
BY VENDOR  
FOR LOSS OF  
TITLE  
DEEDS.

an estate in fee simple in possession, free from incumbrances, or that the same indentures, or either of them, have or has been deposited with any person or persons by way of security, or have or has been otherwise dealt with in such a manner as to prejudice or affect the absolute title of the said A. B. to the said hereditaments or any part thereof, THEN, and in such case, the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

### No. VI.

BY  
SURVIVING  
PARTNER  
FOR  
PAYMENT OF  
DECEASED  
PARTNER'S  
SHARE.

BOND *by* SURVIVING PARTNER *for* PAYMENT *of* the  
ESTIMATED VALUE *of* DECEASED PARTNER'S SHARE  
*by* INSTALMENTS *to* his EXECUTORS, *and* *for* INDEM-  
NIFYING *his* ESTATE *against* the PARTNERSHIP  
LIABILITIES.

Recite  
provisions  
in articles of  
partnership  
for making  
surviving  
partner  
purchaser of  
deceased  
partner's  
share.

(*BOND from A. B. (obligor), to C. D. of, &c., and E. F. of, &c. (obligees), in the penal sum of £—.*) WHEREAS by articles of partnership entered into on the — day of —, between the above-bounden A. B. of the one part, and G. H. of the other part, it was, amongst other things, provided that the said A. B. and C. D. should from thenceforth become and be co-partners in the trade or business of —, under the firm of —, for the term of — years thence next ensuing, and also that in case either of the said partners should die before the expiration of the said partnership, then the surviving partner should, within three months next after the decease of the partner so dying, settle with the executors or administrators of the deceased partner all accounts and matters relating to the said partnership, and that such surviving partner should pay unto the executors or administrators of such deceased partner such a sum as by the books of the said partnership should appear to have been contributed by such deceased partner to the capital stock of the partnership at his decease, and that such surviving partner should be considered to be the purchaser of such share of the deceased partner in the said capital stock at such sum as aforesaid, and that such surviving partner should purchase the share of the deceased partner in the residue of the property, credits, and effects of the said partnership, and the value of such residue should be ascertained by two persons, one to be chosen

by the surviving partner, and the other by the executors or administrators of the deceased partner, and that the surviving partner should enter into a bond for securing to the executors or administrators of the deceased partner the amount of such sum and valuation by three equal instalments at the respective periods of six, twelve, and eighteen calendar months next after the decease of the partner who should so die as aforesaid, with interest at the rate of £5 per cent. per annum from the time of such decease, and also a bond for indemnifying the estate of the deceased partner against the debts and liabilities of the said partnership: AND WHEREAS the said G. H. died on the — day of —, having first duly made and executed his last will and testament in writing, dated, &c., whereby he appointed the said C. D. and E. F. executors thereof, who shortly afterwards duly proved the said will in the principal Registry of the Court of Probate: AND WHEREAS by the books of the said partnership it appears that the said G. H. had contributed the sum of £—— sterling to the capital stock of the partnership at his decease: AND WHEREAS, pursuant to the provision in this behalf contained in the said articles as aforesaid, the value of the share of the deceased partner in the said residue of the said property, credits, and effects of the said partnership has been ascertained to be the sum of £——, making with the aforesaid sum of £—— the sum of £——: AND WHEREAS, in further pursuance of the said provision, the said A. B. hath executed the above-written bond or obligation: NOW THE CONDITION of the above-written bond or obligation is such that if the said A. B., his heirs, executors, or administrators, do and shall pay to the said C. D. and E. F., or to the survivor of them, or other the legal personal representatives for the time being of the said G. H. deceased, the sum of £—— at the times and by the instalments following—*i.e.*, the sum of £—— on the — day of —, the sum of £—— on the — day of —, and the sum of £—— on the — day of —, and also on the same several days interest for the said sum of £—— or such part thereof as for the time being shall remain unpaid, at the rate of £5 per cent. per annum, to be computed from the date of the above-written bond or obligation, and do and shall at all times hereafter save harmless and keep indemnified the said C. D. and E. F. respectively, and their respective heirs, executors, and administrators, and all and singular the estate and effects of the

BY  
SURVIVING  
PARTNER  
FOR  
PAYMENT OF  
DECEASED  
PARTNER'S  
SHARE.

Bond to be  
entered  
into by  
surviving  
partner for  
payment of  
estimated  
sum by  
instalments.

Death of  
deceased  
partner,  
appointing  
executors.

Contribu-  
tion of  
deceased  
partner to  
capital  
stock.

Sum at  
which his  
share is  
estimated.

Bond  
executed to  
secure the  
payment of  
that sum,  
and as an  
indemnity  
against the  
partnership  
liabilities.  
Condition of  
Bond.



BY  
SURVIVING  
PARTNER  
FOR  
PAYMENT OF  
DECEASED  
PARTNER'S  
SHARE.

said G. H. deceased, of and from all debts and liabilities whatsoever, in respect of the said partnership business, THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

### No. VII.

BY OBLIGOR  
FOR PER-  
FORMANCE  
OF DUTIES.

BOND *by the* OBLIGOR *for the* FAITHFUL PERFORMANCE  
of his DUTIES on his APPOINTMENT to a RESPON-  
SIBLE OFFICE.

Appoint-  
ment of  
obligor to  
office.

Condition  
of Bond.

(BOND from A. B., C. D., and E. F. (obligor and sureties), to G. H. and I. K., two of the present directors of — Society, in the penal sum of £—): WHEREAS the said A. B. hath lately been appointed to and now holds the office of — in the said society: NOW THE CONDITION of the above-written bond or obligation is such that if the said A. B. shall from time to time and at all times hereafter, so long as he shall hold the said office of —, duly and regularly account for and pay to the directors for the time being of the said society, or to any person or persons who may be appointed for this purpose, all moneys which shall come to his hands, either in the capacity of — of the said society, or by any other means on account of the said society, and in every other respect fully and faithfully perform and discharge the duties and obligations which from time to time shall devolve on him in such capacity as aforesaid, THEN the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

### No. VIII.

BOND OF  
RESIGNA-  
TION.

BOND of RESIGNATION *of an* ECCLESIASTICAL BENEFICE (a).  
(BOND by A. B. to C. D. in the penal sum of £—): WHEREAS the above-named C. D. is the patron of the rectory of the parish

9 Geo. 4  
c. 94.

(a) The 9 Geo. 4, c. 94, sect. 1, provides that every engagement made after the passing of the Act for the resignation of any spiritual office, being a benefice with cure of souls, dignity, prebend, or living ecclesiastical, to the intent or purpose to be manifested by the terms of such engagement, that any one person whosoever, to be specially named and described therein, or one of two persons to be specially named and described therein, being such persons as are thereafter mentioned, shall be presented to such

church of —, in the county of —, and diocese of —, which rectory is now vacant by the X. Y., the late rector thereof; and the said C. D. is about to present the above-bounden A. B. to the said rectory: AND WHEREAS the said A. B. has agreed to resign the said rectory in favour of E. D., a son of the said C. D., and now a student of — College, in the University of —, in case he shall take holy orders, and the said C. D., or other the patron or patrons for the time being of the said rectory shall desire to present him thereto: NOW THE CONDITION of the above-written bond is such that in case the said E. D. shall at any time during the life of the said A. B. be admitted into the full orders of a priest of the Church of England, and the said A. B. shall within six calendar months after being requested so to do in writing by the said C. D. or other the patron or patrons for the time being of the said rectory, well and effectually resign the said rectory to the bishop of the said diocese, and cause such resignation to be accepted, so that the said C. D. or other the patron or patrons for the time

BOND OF  
RESIGNA-  
TION.

Recital of  
agreement  
to present  
obligor on  
condition  
of his  
executing  
Bond.

Condition  
of Bond.

spiritual office, or that the same shall be given or bestowed to or upon him, shall be valid, and the performance of the same may also be enforced in equity; provided that such engagement shall be so entered into before the presentation, nomination, collation, or appointment of the party so entering into the same as aforesaid.

Sect. 2 provides that where two persons shall be so specially named and described in such engagement, each of them shall be, either by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew of the patron or of one of the patrons of such spiritual office, not being merely a trustee or trustees of the patronage of the same, or of the person or one of the persons for whom the patron or patrons shall be a trustee or trustees, or of the person or one of the persons by whose direction such presentation, collation, gift, or bestowing shall be intended to be made, or of any married woman whose husband in her right shall be the patron or one of the patrons of such spiritual office, or of any other person in whose right such presentation, collation, gift, or bestowing shall be intended to be made.

Sect. 4 provides that one part of the deed, instrument, or writing by which such engagement shall be made, given, or entered into, shall, within two calendar months next after the date thereof, be deposited in the office of the registrar of the diocese wherein the benefice shall be locally situate.

Sect. 5 provides that every resignation to be made in pursuance of any such engagement as aforesaid shall refer to the engagement in pursuance of which it is made, and state the name of the person for whose benefit it is made, and that it shall not be lawful for the ordinary to refuse such resignation unless upon good and sufficient cause to be shown for that purpose, and the person for whose benefit it is made must be presented within six calendar months next after notice of such resignation shall have been given to the patron.

Sect. 6 provides that the Act shall not apply to presentations by the Crown, or by any ecclesiastical or other public body.

BOND OF  
RESIGNA-  
TION.

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being of the said rectory, may present thereto the said E. D., or in case the said E. D. shall not be admitted into priest's orders as aforesaid during the life of the said A. B., or the said A. B. shall not be requested to resign the said rectory in manner aforesaid, THEN and in any of the said cases the above-written bond shall be void, otherwise the same shall remain in full force and virtue.

## RELEASES AND INDEMNITIES.

### No. I.

RELEASE *by* RESIDUARY LEGATEES *to the* TRUSTEES  
and EXECUTORS *of a Will on the distribution of*  
*the RESIDUARY ESTATE of the TESTATOR (a).*

RELEASE BY  
RESIDUARY  
LEGATEES.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c., and C. D. of, &c. (*releasors*), of the one part, and E. F. of, &c., and G. H. of, &c. (*releasees*), of the other part : (*Recite the will whereby the testator devised and bequeathed unto the said E. F. and G. H., their heirs, executors, administrators, and assigns, all his real and personal estate and effects, upon trust to sell and convert the same into money, and to stand possessed of the same, after the payment of his debts and legacies, in trust for the testator's wife for life, and after his decease, in trust for his children in equal shares, and appointed E. F. and*

(a) Executors and trustees are entitled to have their accounts examined and settled before they hand over the balance to the cestuis que trust, and it is usual and proper in such case for the cestuis que trust to execute a formal deed of release. But if a trust is declared of a specified fund in favour of a specified person, so that there are in fact no accounts to be settled, and the trustee merely hands over such specified fund in strict accordance with the declared trust, he is not entitled to require a release under seal : *Chadwick v. Heatley*, 2 Coll. 137 ; *King v. Mullins*, 1 Drew. 308.

In what cases executors and trustees should have a release.

Releases should be drawn so as to show on the face of the deed that the releasors are fully aware of all the circumstances connected with the subject of release, of their own rights and position, and of the position of the intended releasees as to breach of trust, liability, &c., and they should also explicitly state the claims to be released. Releases will be generally governed by the recitals, so that where the words of the release are general, but the recitals refer only to a particular matter, the release will be construed to relate in fact to the matter recited : *Ramsden v. Hylton*, 2 Ves. Sen. 304 ; *Pritt v. Clay*, 6 Beav. 503.

How releases ought to be drawn.

Where there are other persons than the releasors who can be interested in or may have claims on the matter or property to which the release relates, the releasing parties generally execute a covenant of indemnity as well as a release, but not otherwise.

RELEASE BY  
RESIDUARY  
LEGATEES.

Seisin by  
testator of  
freehold  
messuage.  
Sale of  
freeholds,  
balance  
after paying  
testamen-  
tary ex-  
penses and  
debts.

Investment  
of balance.

Death of  
wife and  
administra-  
tion of her  
effects.

Application  
of dividends  
of invested  
balance.

Sale of the  
stock.

*G. H. executors of his will.—Death of testator leaving the said A. B. and C. D. his only surviving children; and probate of his will*): AND WHEREAS the said testator at the time of his decease was seised in fee simple of a certain freehold messuage or tenement, being No. &c., and situate, &c.: AND WHEREAS, pursuant to the trust for that purpose contained in the said will, the said E. F. and G. H. sold the said freehold hereditaments for the sum of £——: AND WHEREAS the said E. F. and G. H. shortly after the death of the said testator, possessed themselves of his personal estate, and converted into money such part thereof as did not consist of money, and with and out of the moneys produced by the sale of the said hereditaments, and the calling in and conversion of the said personal estate, and with and out of such part of the said personal estate as originally consisted of money, paid the funeral and testamentary expenses and debts of the said testator, and the legacies bequeathed by the said will, and the legacy duty thereon respectively, and there remained in the hands of the said E. F. and G. H., after such payments, the balance or sum of £——: AND WHEREAS the said E. F. and G. H., pursuant to the trust in that behalf contained in the said will, invested the said sum of £—— in the purchase of £—— £3 per Cent. Consolidated Annuities: AND WHEREAS the said —— (*testator's wife*) died on the —— day of —— and administration of her estate and effects was on the —— day of —— granted to the said A. B. and C. D. by the principal registry of the Probate Division of the High Court of Justice: AND WHEREAS the dividends of the said sum of £—— £3 per Cent. Consolidated Annuities which accrued during the life of the said —— (*testator's wife*), were duly paid to her, and a proportionate part of the dividend which accrued due in the month of —— following her death was duly paid to the said A. B. and C. D. as her administrators as aforesaid, and the residue of the last-mentioned dividends, and also the dividends which subsequently accrued on the said Bank Annuities up to the sale thereof hereinafter mentioned, were paid to the said A. B. and C. D. in their own respective rights in equal shares, as they the said A. B. and C. D. do hereby acknowledge: AND WHEREAS the said E. F. and G. H., at the request of the said A. B. and C. D., lately sold the said sum of £—— £3 per Cent. Consolidated Annuities, and the said sale produced the sum of £—— sterling, after deducting brokerage: AND WHEREAS the said

sum of £—— has been reduced by the payment thereof of the legacy duty, and of the costs and expenses of the said trustees incurred in relation to the said trusts to the sum of £—— :

RELEASE BY  
RESIDUARY  
LEGATEES.

AND WHEREAS the said E. F. and G. H. have, before the execution of these presents, paid the said sum of £—— to the said A. B. and C. D. in equal shares as they do hereby acknowledge:

Payment of  
proceeds to  
residuary  
legatees,  
who are  
satisfied  
with  
account  
rendered.

AND WHEREAS, previously to the last-mentioned payment, the said E. F. and G. H. rendered to the said A. B. and C. D. an account of the real and personal estate of the said testator, and of the disposition and application of the same and the proceeds thereof, and of the income thereof respectively, and the said A. B. and C. D. examined the said account and are satisfied therewith, as they do hereby acknowledge and declare: AND they have therefore agreed to execute such release as is herein-

Agreement  
for release.

after contained: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, they the said A. B. and C. D. do, and each of them doth, hereby release and discharge the said E. F. and G. H., and each of them, of and from all actions, claims, and demands whatsoever, for or in respect or on account of the real and personal estate of the said testator, and the rents, profits, and income thereof respectively, or any part or parts thereof respectively, or any act, deed, matter, or thing whatsoever done or omitted to be done by the said E. F. and G. H., or either of them, in or about the execution of the said will or the trusts thereof, or in anywise relating to the premises.

Release by  
children to  
trustees and  
executors.

IN WITNESS, &c.

## No. II.

RELEASE by RESIDUARY LEGATEES to EXECUTORS and TRUSTEES, *where the accounts are set forth in SCHEDULES (a).*

RELEASE BY  
REFERENCE  
TO  
SCHEDULES.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c., C. D. of, &c., E. F. of, &c., and G. H. of, &c. (*releasers*), of the first part, and M. N. of, &c., and O. P. of, &c. (*releasees*), of the other part (*Recite will whereby the testator made certain pecuniary bequests, and bequeathed to —— for his life to the use of the*

Recite will,  
&c.

(a) It is not usual to set forth the executorship accounts in schedules to the deed of release, but there are cases in which such a course may be desirable, and a form adapted to such cases is therefore inserted.

RELEASE BY  
REFERENCE  
TO  
SCHEDULES.

That furni-  
ture, &c.,  
have been  
delivered to  
legatee for  
life.

That  
trustees  
have sold  
real estate  
and pos-  
sessed  
themselves  
of personal  
estate and  
paid over  
residue to  
residuary  
legatees.

That partic-  
ulars of  
estate and  
proceeds are  
set forth  
in first  
schedule.

That partic-  
ulars of  
payments,  
&c., are  
set forth  
in second  
schedule.

That  
residuary

*household goods and furniture, plate, linen, china, glass, and books, that should be at his decease in his dwelling-house in —, and whereby he devised and bequeathed all the residue of his real and personal estate unto the said M. N. and O. P., upon trust to sell and convert into money and to divide the proceeds between the said A. B., C. D., E. F., and G. H., equally, and appointed the said M. N. and O. P. executors of his said will, —death of testator and probate of his will): AND WHEREAS the household furniture, and other personal chattels, the use of which was bequeathed by the said will to the said — as afore- said, have, since the decease of the said testator, been delivered to him, and are now in his possession: AND WHEREAS, pursuant to the trust in this behalf contained in the said recited will, the said M. N. and O. P. have sold all the real estate of the said testator, and have possessed themselves of his personal estate not specifically bequeathed by the said will, and have out of the said personal estate, and the proceeds of the said real estate, paid the funeral and testamentary expenses and debts of the said testator, and the legacies bequeathed by his said will, and all the duties payable in respect of the estate of the said testa- tor, and have paid or transferred the clear residue of the said personal estate, and of the proceeds of the said real estate, to the said A. B., C. D., E. F., and G. H., in equal shares: AND WHEREAS the particulars of the personal estate of the said tes- tator, and of the proceeds of the sale of his real estate are set forth in the first part of the first schedule hereunder written, and the particulars of the sums received by the said trustees since the death of the said testator, for rent of his said real estate, and for interests and dividends on the several investments of the personal estate of the said testator are set forth in the second part of the same schedule: AND WHEREAS the particu- lars of the sums paid for the funeral and testamentary expenses and debts of the said testator, and for the several legacies be- queathed by his said will, and the duties payable in respect of his estate are set forth in the first part of the second schedule hereunder written, and the particulars of the several sums of money, stock, and securities respectively paid and transferred to the parties entitled thereto on account of the residue of the personal estate and effects of the said testator, and the proceeds of the sale of his said real estate, are set forth in the second part of the same schedule: AND WHEREAS the particulars set*

forth in the first and second schedules hereunder written have been carefully examined by the said A. B., C. D., E. F., and G. H., who are in all respects satisfied with the correctness thereof: AND WHEREAS for the satisfaction of the said M. N. and O. P., the said A. B., C. D., E. F., and G. H., have agreed to execute to them such a release as is hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, they the said A. B., C. D., E. F., and G. H., do and each of them doth hereby release and discharge the said M. N. and O. P., and each of them, of, and from all, &c. (*Release, supra*, p. 591): PROVIDED NEVERTHELESS, that this release shall not extend to the household furniture and other personal chattels, the use of which was bequeathed by the said will, to the said——as aforesaid.

RELEASE BY  
REFERENCE  
TO  
SCHEDULES.

legatees are  
satisfied  
with such  
particulars.

Witnessing  
part.

Release.

Provided  
that releas-  
shall not  
extend to  
furniture,  
&c.

IN WITNESS, &c.

---

THE FIRST SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

*The First Part.*

Particulars of the personal property of which the testator died possessed, and the proceeds of the sale of his real estate.

*The Second Part.*

Particulars of the sums accrued due since the death of the said testator for the rent of the said real estate, and for interest and dividends on the several investments of the personal estate of the said testator.

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THE SECOND SCHEDULE REFERRED TO IN THE ABOVE-  
WRITTEN INDENTURE.

*The First Part.*

Particulars of sums paid for probate, funeral expenses, expenses attending the executorship, debts, and legacies.

*The Second Part.*

Particulars of the several sums of money, stock, and securities respectively paid and transferred to the parties entitled



RELEASE BY  
REFERENCE  
TO  
SCHEDULES.

thereto on account of the residue of the personal estate and effects of the said testator, and the proceeds of the sale of his said real estate.

### No. III.

RELEASE TO  
TRUSTEES  
WHERE  
SHARE IS  
RETAINED.

RELEASE by RESIDUARY LEGATEES to the TRUSTEES and EXECUTORS of a WILL on the distribution of the RESIDUARY ESTATE, where the SHARE of a DAUGHTER is settled by the Will, and is RETAINED by the TRUSTEES, accordingly.

Parties

THIS INDENTURE, made the——day of——, BETWEEN A. B. of, &c. (*one releasor*), of the first part, C. B. of, &c. (*another releasor*), of the second part, D. B. of, &c. (*another releasor*), of the third part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the fourth part (*Recite will of testator, giving residuary estate to trustees, in trust, to sell and convert and hold proceeds in trust for wife for life, and then for the children equally, the share of daughters to be settled—death of testator, leaving two sons and a daughter, A. B., C. B., and D. B., and probate of his will*): AND WHEREAS after the death of the testator the said trustees possessed themselves of his personal estate, and after paying thereout his funeral and testamentary expenses and debts, invested the residue, amounting to £——, on mortgage security. (*Death of Wife*.) AND WHEREAS the said E. F. and G. H. have since the death of the said——(*wife*), called in the said sum of £——, and applied the sum of £——, part thereof in payment of the legacy duty, and of the expenses incidental to the distribution of the trust money, leaving the sum of £—— in their hands: AND WHEREAS the said E. F. and G. H. have before the execution of these presents, paid the sum of £—— (being one-third part of the said sum of £——), to the said A. B., and the like sum of £—— (being one other third part thereof), to the said C. B. (as the said A. B. and C. B. do hereby respectively acknowledge), and have retained the sum of £—— (being the remaining one-third part thereof), as and for the share of the said D. B., by the said will directed to be held in trust for her and her issue as aforesaid: AND WHEREAS previously to the said payment, the said E. F. and G. H. rendered to the said A. B., C. B., and D. B., an account of the estate of

Conversion of estate.

Payment of succession duty and expenses.

Payment of two-thirds to sons, and retainer by trustees of one-third for daughter and her issue.

That account has been rendered and approved.

the said testator, and of the application thereof, and the said A. B., C. B., and D. B., examined the said account, and are satisfied therewith: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the said A. B., C. B., and B. D., do, and every of them doth hereby release, &c. (*as in Precedent*, No. 1, p. 591, *to the end*): PROVIDED ALWAYS that these presents shall not extend to release the said E. F. and G. H., or either of them, from the said sum of £—— retained by them as and for the share of the said D. B. as aforesaid, or the future execution of the trusts declared concerning the same by the said will.

IN WITNESS, &c.

RELEASE TO  
TRUSTEES  
WHERE  
SHARE IS  
RETAINED.

Witnessing  
part.  
Release.

Release not  
to extend to  
share of  
daughter  
retained by  
trustees.

#### No. IV.

RELEASE *by the CESTUIS QUE TRUST and those claiming under them to the TRUSTEES of a SETTLEMENT on the DISTRIBUTION of the TRUST FUNDS.*

RELEASE TO  
TRUSTEES OF  
SETTLEMENT.

THIS INDENTURE, made the — day of —, 18—, between A. B., of, &c. (*one releasor*), of the first part, C. B. of, &c. (*another releasor*), of the second part, G. H. of, &c., and I. K. of, &c. (*other releasors*), of the third part, D. E. of, &c., and F., his wife (*other releasors*), of the fourth part, and L. M., of, &c. and N. O. of, &c. (*trustees*), of the fifth part. WHEREAS, by an indenture dated, &c., and made between X. B. of, &c., of the first part, Y. Z. of, &c., of the second part, and (*trustees*) of, &c., of the third part (being the settlement made on the marriage of the said X. B. and Y. Z.). It was declared that the said (*trustees*) their executors, administrators, and assigns, should stand possessed of, &c. (*trust funds*): UPON the trusts therein declared during the lives of the said X. B. and Y. Z., and the life of the survivor of them, and after the decease of such survivor, IN TRUST for all or such one or more of the issue of the said then intended marriage in such shares and manner as the said X. B. and Y. Z. should by any deed or deeds appoint, and in default of such appointment, and so far as any such appointment should not extend, then as the survivor of them should by deed or will appoint, and in default of such appointment, and so far as any such appointment should not extend: IN TRUST for all the children of the said then intended marriage, who being a son or

Parties.

Recital of  
marriage  
settlement  
of parents.

RELEASE TO  
TRUSTEES OF  
SETTLEMENT.That there  
have been  
three chil-  
dren of  
marriage.Marriage of  
daughter  
and appoint-  
ment to her  
and settle-  
ment of the  
share so  
appointed.Deaths of  
father and  
mother.Appoint-  
ment of new  
trustees.Present  
state of  
trust funds.Bequest by  
beneficiaries  
to trustees  
to distri-  
bute.Sale and  
calling in of  
trust funds,  
and pay-

sons should attain the age of twenty-one years, or being a daughter or daughters should attain that age or marry in equal shares, but subject to a proviso that no child who or any of whose issue should take any share under any appointment should be entitled to any share of the unappointed part of the trust funds without bringing the appointed share into hotchpot: AND WHEREAS there have been issue of the said marriage two sons and one daughter, namely, the said A. B., C. B., and F. E., who have all attained the age of twenty-one years, and two other children who died under that age and unmarried: AND WHEREAS the said F. E., then F. B., intermarried with the said D. E. in the month of —, 18—. And in contemplation of the said marriage by a deed poll under the hands and seals of the said X. B., and Y., his wife, dated, &c., the said X. B. and Y., his wife in exercise of their said power in that behalf, appointed that the trustees or trustee for the time being of the said indenture of settlement should from and after the decease of the survivor of them, the said X. B. and Y., his wife, stand possessed of one equal third part of the trust funds subject to the trusts of the said indenture of settlement: IN TRUST for the said F. E., then F. B. absolutely, AND by an indenture dated, &c. and made, &c. (being the settlement made on the marriage of the said D. E. and F. E., his wife), the said one-third share appointed to the said F. E. as last aforesaid was assigned unto the said G. H. and I. K., their executors, administrators, and assigns, upon the trusts therein declared concerning the same (*If the deed contains a receipt clause, recite it here*): AND WHEREAS the said X. B. died on the — day of —, 18—, and the said Y. B. died on the — day of —, 18—, without having made any appointment of the said trust funds except as aforesaid: AND WHEREAS the said L. M. and N. O. are the present trustees of the said indenture of settlement of the — day of —, having been appointed trustees thereof by an indenture dated, &c., and endorsed on the said indenture of settlement (*Recite the various changes of investment, tracing the trust funds to their present state of investment*): AND WHEREAS the several persons parties hereto of the first four parts have requested the said L. M. and N. O. as the trustees of the said indenture of settlement to distribute the said trust funds among them in the manner hereinafter expressed: AND WHEREAS, in compliance with such request, the said L. M. and N. O. lately sold the said

sum of £—— Consolidated £3 per Cent. Annuities, and by such sale realised the sum of £——, and they have also called in the said sum of £—— invested on mortgage security as aforesaid, and the said sums of £—— and £—— made together the sum of £——, out of which sum the said trustees have paid the sum of £—— for succession duty and for the expenses incidental to the winding up of the trust, leaving the sum of £—— : AND WHEREAS the said L. M. and N. O. have paid the sum of £—— (being one-third part of the said sum of £——) to the said A. B., the like sum of £—— (being one other third part thereof) to the said C. B., and the sum of £—— (being the remaining one-third part thereof) to the said G. H. and I. K. as the trustees of the said indenture of the —— day of ——, with the consent of the said D. E. and F., his wife, as the said several persons parties hereto of the first four parts do hereby acknowledge : AND WHEREAS all the income which has been received in respect of the trust funds since the decease of the said Y. B. has been divided between the persons entitled thereto as aforesaid as the parties hereto of the first four parts do hereby also acknowledge. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, the several persons parties hereto of the first four parts respectively do and every of them doth hereby release and discharge the said L. M. and N. O., and each of them, and the former trustees of the said indenture of settlement of the —— day of —— and every of them of and from all actions, claims, and demands whatsoever, for or on account or in respect of the several trust funds and premises settled by the said indenture or the trust funds for the time being representing the same or the income thereof respectively, or for or on account or in respect of any act, deed, matter, or thing whatsoever, done or omitted to be done by the said L. M. and N. O., or either of them, or any former trustee or trustees of the same indenture, in or about the execution of the trusts and powers of the same indenture, or in anywise relating thereto.

IN WITNESS, &c.

RELEASE TO  
TRUSTEES OF  
SETTLEMENT.

ment of  
succession  
duty and  
expenses.

Distribution  
of residue.

That income  
has been  
duly paid.

Witnessing  
part.

Release.

## No. V.

RELEASE  
AND  
INDEMNITY  
TO RETIRING  
TRUSTEES.

RELEASE *and* INDEMNITY by CESTUIS QUE TRUST TO  
*retiring Trustees on the* APPOINTMENT of NEW  
TRUSTEES of a SETTLEMENT (a).

Parties. THIS INDENTURE made the — day of —, BETWEEN  
A. B. of, &c., and C. his wife (*cestui que trust*), of the first part,  
D. B. of, &c., E. B. of, &c., and F. B. of, &c. (*other cestuis que*  
*trust*), of the second part, and G. H. of, &c., and I. K. of, &c. (*re-*  
*tiring trustees*), of the third part (*Recite settlement under which*  
*G. H. and I. K. were trustees, and containing the usual trusts*  
*for husband and wife successively, and then for their children*  
*—power to appoint new trustees*): AND WHEREAS there have  
Recite settlement.  
Issue of marriage.  
Retirement of old trustees and appointment of new trustees.  
Dealsings with trust funds.  
That some of the investments are not authorized.  
Payment of income.  
Agreement for release and indemnity.  
been issue of the said marriage three children, viz., the said  
D B., E. B., and F. B., who have all attained the age of twenty-  
one years, and two others who died under that age and un-  
married: AND WHEREAS the said G. H. and I. K., being desirous  
of being discharged from the trusts of the said indenture of  
settlement, L. M. of, &c., and N. O. of, &c., have been appointed  
trustees in their place by an indenture bearing even date with  
these presents: AND WHEREAS there have been several changes  
of investments of the trust funds settled by the said indenture,  
and the same now consist of or are represented by the following  
particulars, namely (*state particulars of investments*): AND  
WHEREAS some of the said investments are not in strict accord-  
ance with the trusts of the said indenture, but the same were  
made at the request of the said A. B. and C. his wife, and are  
approved of by the said D. B., E. B., and F. B.: AND WHEREAS  
the income of the trust funds has been duly and regularly paid  
to the said A. B. up to the date of these presents: AND WHEREAS  
it was part of the arrangement, on the retirement of the said  
G. H. and I. K. from the trusts of the said indenture, that such  
release and covenant for indemnity should be given to and

(a) Retiring trustees are not, as a general rule, entitled to a release from the cestuis que trust, but sometimes it is expressly stipulated that they shall have one, as where the dealings with the trust funds have not been regular, and the irregularities have been committed at the instance of the cestuis que trust, who are *sui juris*.

entered into with them as are hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, the said A. B. and C. his wife, D. B., E. B., and F. B., do and every of them doth hereby release the said G. H. and I. K., and each of them of and from all actions, claims, and demands whatsoever, for or on account, or in respect of the trust funds and premises settled by the said indenture, and the trust funds from time to time representing the same, or the income thereof respectively, or for or on account, or in respect of any act, deed, matter, or thing whatsoever, done or omitted to be done by the said G. H. and I. K., or either of them, in or about the execution of the trusts and powers of the said indenture, or in anywise relating thereto, and in particular for or on account of some of the investments of the said trust funds not being authorised by the said indenture: AND the said A. B., D. B., E. B., and F. B. do hereby jointly and every of them doth hereby separately covenant with the said G. H. and I. K., their executors and administrators, that they the said covenanting persons, their heirs, executors, and administrators, and every of them will at all times keep indemnified the said G. H. and I. K., their executors and administrators, and every of them from and against all actions, claims, and demands whatsoever, which may be instituted against them or him by or on behalf of the said C. B. or any other person whomsoever, for or on account of any act, deed, matter, or thing whatsoever, done or omitted to be done by the said G. H. and I. K., or either of them, in or about the execution of the trusts and powers of the said indenture, or in anywise relating thereto, and in particular for or on account of such unauthorised investments having been made as aforesaid.

IN WITNESS, &c.

RELEASE  
AND  
INDEMNITY  
TO RETIRING  
TRUSTEES.

Witnessing  
part.

Release by  
father and  
mother and  
children to  
retiring  
trustees.

Covenant by  
father and  
children to  
indemnify  
retiring  
trustees  
against any  
claims by  
mother

## No. VI.

RELEASE of LANDS from a LEGACY charged thereupon  
by will.

RELEASE OF  
LANDS FROM  
LEGACY.

TO ALL TO WHOM THESE PREMISES SHALL COME, A. B. of, &c. (*releasor*), SEEDS GREETING: WHEREAS S. H., late of, &c., by his will, dated the — day of —, gave and bequeathed the sum of £5000 to the said A. B., and directed

Parties.  
Recite  
bequest of  
legacy and  
devise of  
lands  
charged  
therewith.

RELEASE OF  
LANDS FROM  
LEGACY.

Death of  
testator and  
probate of  
will.

Agreement  
to release,

that all  
interest on  
legacy  
has been  
received.

In consid-  
eration of  
payment of  
legacy.

Release of  
lands from  
legacy.

that the same should be charged on, and be payable primarily out of his real estate, and the said testator by his said will, gave and devised all his real estate so charged as aforesaid unto the said C. D., his heirs, and assigns, for ever (*Death of testator and probate of will*): AND WHEREAS the said A. B. has requested the said C. D. to pay him the said legacy of £5000 which he the said C. D. has agreed to do, on having such release as is hereinafter expressed: AND WHEREAS all interest for the said sum of £5000 has been paid up to the date of these presents, as he the said A. B. doth hereby acknowledge: NOW THESE PRESENTS WITNESS, that in consideration of the sum of £5000 to the said A. B., paid by the said C. D., on or before the execution of these presents (the receipt whereof he the said A. B. doth hereby acknowledge), he the said A. B. doth hereby release all the real estate of the said testator, of and from the said legacy of £5000, and all interest thereon and all claims and demands for or in respect of the same.

IN WITNESS, &c.

No. VII.

RELEASE  
OF RIGHT TO  
DOWER.

RELEASE of WIFE'S right to DOWER, in respect of all  
the REAL ESTATE to which her HUSBAND was entitled  
at his DECEASE.

Recite will  
of testator.

That widow  
is entitled  
to dower.

Witnessing  
part.

Release of  
right to  
dower.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., widow (*releasor*), SENDS GREETING: WHEREAS C. B., late of, &c., died intestate, on the — day of —, 18—, leaving the said A. B., his widow, and E. F., his only son and heir at law: AND WHEREAS the said C. B. was at his death seised of freehold lands and hereditaments out of which the said A. B. his widow, is entitled to dower: AND WHEREAS the said A. B. has, at the request of the said E. F., agreed to release the said lands and hereditaments from her dower in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said A. B., in consideration of her natural love and affection for the said E. F., doth hereby release and discharge ALL AND SINGULAR the lands and hereditaments of or to which the said C. B. was seised or entitled at his decease, of and from all the right and title to dower of her the said A. B., out of or in respect of the same, and all claims and demands relating thereto.

IN WITNESS, &c.

## No. VIII.

RELEASE of a POWER of REVOCATION and NEW-  
APPOINTMENT contained in a VOLUNTARY SETTLE-  
MENT (a). RELEASE  
OF POWER.

TO ALL TO WHOM THESE PRESENTS SHALL COME

A. B. of, &c. (*releasor*), SENDS GREETING (*Recite settlement* Recite  
settlement.  
*whereby lands were conveyed by A. B. to use of A. B. for life,*  
*with remainder to C. B. his wife for life, with remainder to use*  
*of the children of A. B. and C. B. as tenants in common in fee*  
*simple, with power to A. B. to revoke the uses and appoint the*  
*property to other uses): AND WHEREAS the said C. B. died on*  
the — day of —: AND WHEREAS there have been two chil- Death of  
settlor's  
wife.  
dren of the said A. B. and C. his wife, namely, D. B. and E. B., That there  
are two  
children.  
both of whom have attained the age of twenty-one years: AND That settlor  
is desirous  
to release  
power of  
revocation.  
WHEREAS the said A. B. has not exercised the power of revoca-  
tion and new appointment reserved to him by the said indenture  
of settlement, and he has now agreed to release the same in the  
manner hereinafter expressed: NOW THESE PRESENTS Witnessing  
part.  
WITNESS, that the said A. B., doth hereby release, and quit Release of  
power.  
claim unto the said D. B. and E. B., and to all other persons  
interested in the hereditaments comprised in the said indenture  
of settlement, the said power of revocation and new appoint-  
ment reserved to the said A. B. in and by the said indenture as  
aforesaid, To the end and intent that the same hereditaments  
shall absolutely remain and be to the uses declared by the said  
indenture, freed and discharged from the said power of revoca-  
tion and new appointment.

IN WITNESS, &c.

(a) Powers are distinguished as follows: 1. Appendant or appurtenant; 2. Collateral or in gross; 3. Simply collateral. Lord St. Leonards defines powers appendant or appurtenant as powers which strictly depend on the estate limited to the person to whom they are given; powers collateral or in gross, as powers given to a person who had an interest in the estate at the execution of the deed creating the power, or to whom an estate is given by the deed, but which enable him to create such estate only as will not attach on the *interest* limited to him; and a power *simply* collateral, as a power to a person not having any interest in the land, and to whom no estate is given, to dispose of or charge the estate in favour of some other person. A power simply collateral cannot by any means be extinguished or released, but a power which is not simply collateral can be released. Sug. Pow. 7th Edition, pp. 39 to 45.



## No. IX.

## RELEASE of ACTIONS on PAYMENT of COSTS.

RELEASE  
OF ACTIONS  
ON PAYMENT  
OF COSTS.

Recite that  
actions had  
been com-  
menced by  
releasor on  
account of  
libels.

Agreement  
to accept a  
sum in  
satisfaction  
of damage  
occasioned  
by the  
libels.

Release of  
actions, &c.,  
on account  
of libels

and agree-  
ment to  
determine  
actions.

TO ALL TO WHOM THESE PRESENTS SHALL COME,  
A. B. of, &c. (*releasor*), SENDS GREETING: WHEREAS two  
several actions have lately been commenced by the said A. B.  
in the High Court of Justice (Common Pleas Division) against  
C. D. of, &c., and E. F. of, &c., for the printing and publication  
of certain libels against him the said A. B.: AND WHEREAS it  
hath been agreed between the parties to these presents, that the  
said C. D. and E. F. should pay to the said A. B. the sum of  
£—— for and in full satisfaction of all damages and costs  
suffered and incurred by the said A. B. on account of the said  
libels, and in and about the prosecution of the said actions, and  
that upon payment of the said sum of £——, the said actions  
and all further proceedings therein shall be wholly stayed and  
discontinued: NOW THEREFORE KNOW YE, and these  
presents witness, that in consideration of the said sum of £——  
so paid to the said A. B. by the said C. D. and E. F. in full  
satisfaction as aforesaid, the receipt whereof is hereby acknow-  
ledged, he the said A. B. doth hereby remise, release, and quit  
claim unto the said C. D. and E. F., and each of them, ALL and  
all manner of actions, causes of action, claims and demands  
whatsoever, which he the said A. B. now hath, or at any time  
hereafter can or may have, or, but for the execution of these  
presents, could or might have had against the said C. D. and  
E. F., or either of them, for or by reason or in respect of any  
matter or thing contained in the said libels as aforesaid, or for or  
by reason of any other matter or thing in anywise relating  
thereto: AND he the said A. B. doth hereby consent and agree  
that the said actions shall henceforth cease and be determined.

IN WITNESS, &c.

## X.

RELEASE *and* INDEMNITY *from Pecuniary* LEGATEES FROM LEGATEES TO  
*to* EXECUTORS, *who pay the* LEGACIES *after the* EXECUTORS.  
*withdrawal of a* CAVEAT *which has been entered*  
*by some of the* NEXT *of* KIN *for impeaching the*  
 WILL.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

S. B. of, &c., W. B. of, &c., J. G. of, &c., and R. his wife, J. M. of, &c., and M. his wife, E. P. of, &c., and S. his wife, and M. J. B. of, &c. (*releasers*), of the first part, and W. X. of, &c.

and Y. Z. of, &c. (*releasees*), of the second part: WHEREAS R. B. Recite will of testatrix.

late of — in the county of —, spinster, deceased, made her last will and testament in writing, dated the — day of —, 18—, and thereby bequeathed to the said S. B., W. B., R. G., M. M., S. P., and M. J. B., a legacy of £100 sterling each, and to the said W. X. and Y. Z., £50 sterling each, and directed the legacy duty on all the said legacies to be paid out of her estate, and she thereby appointed the said W. X. and Y. Z. executors of her said will:

AND WHEREAS the said R. B. died on the — day of —, 18—: AND WHEREAS a caveat against the said will was soon afterwards entered in the principal registry of the Court of Probate by the said S. B., W. B., and R. G. (three of the next of kin of the said R. B.), for the purpose of impeaching and setting aside the said will, on the ground of incompetence and undue influence: AND WHEREAS the said S. B., W. B., and R. G.

Death of testatrix.  
Entry of caveat.

have since withdrawn their said caveat and abandoned all proceedings for impeaching and setting aside the said will, and the same was accordingly, on or about the — day of — duly proved by the said W. X. and Y. Z. in the principal registry of the

Withdrawal of caveat, and probate of will.

Probate Division of the High Court of Justice: AND WHEREAS, notwithstanding the said W. X. and Y. Z. are fully satisfied of the validity of the said will of the said R. B., and of her mental competency and freedom from undue influence in relation thereto, yet inasmuch as the abandonment of proceedings for impeaching the same, and the grant of probate thereof in manner aforesaid, may nevertheless not prevent the same being hereafter called in question by the next of kin of the said R. B., or some of them, and in consequence thereof the said W. X.

Agreement by parties of first part to execute release, and give indemnity.

FROM LEGATEES TO EXECUTORS.

Payment of legacy duty and legacies.

Release by parties of first part to executors of will.

Covenants of indemnity to executors of the will.

and Y. Z. have hesitated to act in the trusts of the said will and to pay the several legacies thereby bequeathed and the duty thereon, without an indemnity from the legatees, and the said several parties hereto of the first part have accordingly, for the greater satisfaction of the said W. X. and Y. Z., and as an inducement to them to act in the trusts of the said will, and to pay the said legacies and legacy duty, agreed, in consideration thereof, to execute such release, and to enter into such covenants as are hereinafter contained: AND WHEREAS the said W. X. and Y. Z. have accordingly paid the legacy duty on all the said legacies bequeathed by the said recited will of the said R. B., and have immediately before the execution of these presents retained their own said several legacies of £50 each, and paid to the said S. B., W. B., R. G., M. M., S. P., and M. J. B., their said several legacies of £100 each, as they the said several persons parties hereto of the first part do hereby respectively acknowledge, the said legacies to the said R. G., M. M., and S. P., being so paid to them respectively with the privity and by the desire of their said husbands respectively, as they the said J. G., J. M., and E. P., also hereby admit: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, and in consideration of the premises, they the said several persons parties hereto of the first part do, and every of them doth hereby release and discharge the said W. X. and Y. Z., and each of them, and the estate and effects of the said R. B. from the said several legacies of £100 each by the said will bequeathed as aforesaid, and from all actions, claims, and demands whatsoever, for or in respect of the same legacies respectively, and also from all actions, claims, and demands whatsoever, for or on account of any distributive share, or other interest whatsoever in the estate and effects of the said R. B., either under the statutes for the distribution of the estates of intestates, or otherwise howsoever, or for or on account of any matter or thing whatsoever in anywise relating to the premises, or any of them: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, they the said S. B., W. B., J. G., J. M., E. P., and M. J. B., do hereby jointly for themselves, and every five, four, three, and two of them, apart from the other or others of them, do hereby for themselves, and every one of them, apart from the others of them, doth hereby for himself and

herself, and his and her heirs, executors, and administrators, covenant with the said W. X. and Y. Z., and each of them, and the executors and administrators of them and each of them, that the said several persons parties hereto of the first part, or any of them, or other the person or persons who, in the event of the said R. B. having died intestate, would have been entitled to his estate and effects, or to any part or share thereof, or any person or persons claiming under the several persons aforesaid, or any of them, shall not nor will, at any time or times hereafter, commence or prosecute any action, or other proceeding whatsoever, for the purpose of impeaching or setting aside the said recited will of the said R. B., AND FURTHER THAT they the said several parties hereto of the first part, or some or one of them, or the heirs, executors, or administrators of them or some or one of them, shall and will from time to time, and at all times hereafter, save harmless and keep indemnified the said W. X. and Y. Z., and each of them, and the heirs, executors, and administrators, estates and effects, of them and each of them, from and against all costs, charges, damages, and expenses whatsoever, for or by reason or on account of the said W. X. and Y. Z., or either of them, having acted in the trusts of the said will, and particularly for or by reason or on account of their having paid the said several legacies of £100 each to the said S. B., W. B., R. G., M. M., S. P., and M. J. B., or any of them, or the legacy duty thereon respectively, or for or by reason or on account of any action, or other proceeding that may be commenced, carried on, or prosecuted for impeaching or setting aside the said will, or calling in question the propriety of the payment of the said several legacies and legacy duty, or any of them, or for or by reason or on account of any other matter or thing in anywise relating to the premises, or any of them.

IN WITNESS, &c.

FROM LEGA-  
TIES TO  
EXECUTORS.

## XI.

TO NEW  
TRUSTEES OF  
AN ANCIENT  
SETTLEMENT.

DEED of COVENANT of INDEMNITY to TRUSTEES on  
*their undertaking the REMAINING TRUSTS of an  
ANCIENT SETTLEMENT, which contains no power of  
appointing NEW TRUSTEES the OLD TRUSTEES  
having died, and having in their lifetime committed  
various breaches of Trusts.*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN  
A. B. of, &c. and C. his wife, and — (*the two children of  
A. B. and C. his wife*), of the first part, E. F., of, &c., widow,  
and — (*the two children of E. F.*), of the second part, L. M.,  
of, &c., and N. his wife, and — (*eight children of L. M. and  
N. his wife*), of the third part, and U. X. of, &c., and Y. Z. of,  
&c. (*releasees*), of the fourth part: WHEREAS by an indenture  
dated the — day of — (*here recite settlement by which  
certain property was vested in G. A. and W. A. upon trusts, as  
to one-ninth of the produce for C. B. and her children living  
at her decease, and the issue of deceased children per stripes,  
one other ninth on similar trusts for E. F. and her children  
and remoter issue, and one other ninth for N. M. and her  
children and remoter issue.*) (Then recite all the various  
dealings with the property and the breaches of trust): AND

Recite  
settlement.

What  
moneys had  
come to the  
hands of the  
trustees  
for the  
daughters  
and their  
children;  
loan to  
husbands of  
daughters.

WHEREAS (so far as has been ascertained) the whole of the  
moneys which came to the hands of the said G. A. and W. A.  
as such trustees as aforesaid, amounted to the sum of £7000:  
AND WHEREAS the said G. A. and W. A. some time ago lent the  
sum of £200, part of the said trust moneys, to the said A. B.,  
the sum of £200, further part of the same trust moneys,  
to the said L. M., and the sum of £500, further part thereof, to  
the said E. F., which several sums of £200, £200, and £500 are  
still owing from the said A. B., L. M., and E. F., to the trust  
estate, as they do hereby respectively acknowledge: AND  
WHEREAS the said G. A. died on the — day of —, leaving  
the said W. A. his co-trustee, him surviving: AND WHEREAS  
the said W. A. died on the — day of —, and no letters of  
administration have been granted of the personal estate and  
effects of the said W. A., or any part thereof: AND WHEREAS  
the trust moneys now subject to the trusts by the said recited  
indenture declared in favour of or for the benefit of the said

Death of one  
of the  
trustees.

Death of the  
other  
trustee.

Moneys now  
subject to  
the trusts  
for the  
daughters

C. B., E. F., and N. M., and their respective children and remoter issue, consist of the following particulars (namely), the said sums of £200, £200, and £500 hereinbefore mentioned to have been advanced to the said A. B., L. M., and E. F. respectively as aforesaid, the further sum of £——, now in the hands of G. H. of, &c., at interest, and of the further sum of £——, due and owing from T. P. of, &c., secured with interest on mortgage of certain real estate belonging to the said T. P., situate at ——, and of which said sums of £200, £200, £500, £——, and £——, one equal third part thereof is subject to the trusts declared by the said indenture in favour or for the benefit of the said C. D. and her children and remoter issue, one other equal third part thereof is subject to the trusts by the same indenture declared in favour or for the benefit of the said E. F. and her children and remoter issue, and the remaining one equal third part or share thereof is subject to the trusts by the same indenture declared in favour of or for the benefit of the said N. M., and her children and remoter issue: AND WHEREAS there are two children of the said C. B. now living, and no more, namely (*names of the children*): AND WHEREAS there are two children of the said E. F. now living, and no more, namely (*names of the children*): AND WHEREAS there are eight children of the said N. M. now living, and no more, namely (*names of the children*): AND WHEREAS the said several persons parties hereto of the first, second, and third parts respectively, have requested the said U. X. and Y. Z. to be trustees for the purposes for which the said G. A. and W. A. were appointed trustees by the said recited indenture, so far as relates to the said trust premises hereinbefore mentioned to be now subject to the trusts of the same indenture, which they the said U. X. and Y. Z. have accordingly agreed to do, on the said several persons parties hereto of the first, second, and third parts (other than and except the said C. B. and N. M.) entering into such covenants for the indemnity of the said U. X. and Y. Z. as hereinafter are contained: AND WHEREAS the said parties hereto of the first, second, and third parts are respectively of opinion that it would not be for the advantage of the parties beneficially interested in the trust moneys and premises by the said recited indenture directed to be held in trust as aforesaid, that any steps or proceedings should be taken for the purpose of requiring an account of the trust moneys subject to

TO NEW  
TRUSTEES OF  
AN ANCIENT  
SETTLEMENT.

and their  
children.

Number of  
children of  
daughters  
respec-  
tively.

Agreement  
for indem-  
nity to new  
trustees on  
their under-  
taking the  
continuing  
trusts.

Determina-  
tion of  
parties not  
to take steps  
against the  
estate of  
original  
trustees of  
the settle-  
ment.

TO NEW  
TRUSTEES OF  
AN ANCIENT  
SETTLEMENT.

Indenture  
of even date  
by which  
the new  
trustees  
undertake  
the con-  
tinuing  
trusts.

Covenant of  
indemnity  
by the  
daughters  
and their  
children  
to new  
trustees.

the trusts of the said indenture, or for compelling the representatives of the said G. A. and W. A., or either of them, to answer for a breach or breaches of the trusts of the same indenture; and it was therefore especially stipulated, prior to the said U. X. and Y. Z. consenting to act in the execution of the aforesaid trusts, that the indemnity hereinafter contained should protect them against any liability by reason of the acts of the original trustees of the said recited indenture, or any of them, in manner hereinafter mentioned: AND WHEREAS, for effectuating in part the purposes aforesaid, by an indenture bearing even date with these presents, &c. (*Here recite the appointment of U. X. and Y. Z., as trustees in the place of G. A. and W. A.*): NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement in this behalf, and in consideration of the premises, and particularly of the said U. X. and Y. Z. having consented to act in the execution of the trusts of the said recited indenture as aforesaid, the said several persons parties hereto of the first, second, and third parts (other than and except the said C. B. and N. M.), do hereby for themselves and every two and other combination of them, apart from the others and other of them, do hereby for themselves, and every one of them, apart from the others of them, doth hereby covenant with the said U. X. and Y. Z., their executors and administrators, and also (as a separate covenant) with each of them the said U. X. and Y. Z., his executors and administrators, in manner following (that is to say), that they the said covenanting parties, or some or one of them, their or some or one of their heirs, executors, and administrators shall and will, from time to time, and at all times hereafter, save harmless and keep indemnified the said U. X. and Y. Z., and each of them, and the heirs, executors, and administrators, estates, and effects of them, and each of them, from and against all losses, costs, charges, damages, and expenses, which they or any of them may incur or sustain for or by reason of the said U. X. and Y. Z. having consented to act in the execution of the trusts of the said recited indenture, and particularly for or by reason or on account of any future neglect or omission on the part of the said U. X. and Y. Z., or either of them, their or either of their executors or administrators, to take any steps or proceedings at law or in equity against the representatives of the said G. A. and W. A., or any of them, for compelling them, or any of them,

to render an account of the trust premises subject to the trusts of the said recited indenture, or to answer in damages or otherwise for the loss or misapplication of any of the trust premises for the time being subject to the trusts of the same indenture, or for or by reason or on account of the said U. X. and Y. Z., or either of them, continuing to permit the said several sums of £200, £200, and £500, or any of them, or any part thereof, to remain in the hands of the said A. B., E. F., and L. M., or any of them, or for or by reason or on account of any action, or other proceeding which may hereafter be instituted against the said U. X. and Y. Z., or either of them, or the heirs, executors, or administrators of them or either of them, by any person or persons claiming to be interested under the said recited indenture, for the purpose of charging them or him with any liability in consequence of the acts or defaults of the said G. A. and W. A., or either of them, or the executors or administrators of them, or either of them, in relation to any future transaction or dealing with the said trust premises hereinbefore mentioned to be now subject to the trusts of the said recited indenture, and which would not have constituted a breach or breaches of the trusts or the same indenture if the said U. X. and Y. Z. had been respectively duly appointed trustees of the same indenture, in exercise of a power for that purpose contained in the same indenture, and that it shall be lawful for the said U. X. and Y. Z., their respective executors and administrators, to deduct and retain from and out of the shares and interest in the said trust premises to which the said several persons parties hereto of the first, second, and third parts, or any of them, are or may become beneficially entitled under the trusts of the said indenture, all such losses, costs, charges, and expenses, as they the said U. X. and Y. Z., or either of them, their or either of their executors or administrators, may sustain or incur by reason or in consequence of the said U. X. and Y. Z. having consented to act in execution of the trusts of the said indenture as aforesaid: PROVIDED ALWAYS, and it is hereby agreed and declared, that as between the said several persons parties hereto of the first second, and third parts, and their respective executors and administrators, the said sum of £200, hereinbefore mentioned to have been advanced to the said A. B., shall, upon a distribution of the said trust premises, be deemed to be exclusively part of the share of the same trust premises by the same indenture,

TO NEW  
TRUSTEES OF  
AN ANCIENT  
SETTLEMENT

Sums  
already  
advanced to  
be ac-  
counted for  
as part of  
share on  
distribu-  
tion.



TO NEW  
TRUSTEES OF  
AN ANCIENT  
SETTLEMENT.

directed to be held in trust for the said C. B., her children and remoter issue, and that the said sum of £200 hereinbefore mentioned to have been advanced to the said L. M., shall, upon a distribution of the said trust moneys, be deemed exclusively part of the share of the same trust premises by the same indenture directed to be held in trust for the said L. M. and her children and remoter issue, and that the said sum of £500 hereinbefore mentioned to have been advanced to the said E. F., shall, upon a distribution of the said trust premises, be deemed exclusively part of the share of the same trust premises by the same indenture directed to be held in trust for the said E. F., her children and remoter issue.

IN WITNESS, &c.

## No. XII.

DEMISE OF  
LANDS BY  
WAY OF  
INDEMNITY  
AGAINST  
RENT-  
CHARGE.

DEMISE of a PORTION of certain LANDS charged with an ANNUITY to TRUSTEES for 1000 years upon trusts by way of INDEMNITY and EXONERATION of the REMAINDER of such lands from the payment thereof.

Parties.

Recite will  
charging  
annual sum  
on lands.

That lands  
charged are  
comprised  
in schedules

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*owner*), of the one part, and C. D. of, &c., and E. F. of, &c. (*trustees*), of the other part: WHEREAS I. K., late of —, deceased, duly made his will, dated the — day of —, and thereby devised all his hereditaments situate in the county of — unto the said A. B., his heirs, and assigns, charged with the payment of the annual sum of £— to M. N. during her life (*Death of A. B. and probate of his will*): AND WHEREAS the hereditaments devised by the said will consist of the particulars mentioned and set forth in the first and second schedules hereto: AND WHEREAS the annual value of the hereditaments comprised in the first schedule hereto considerably exceeds the annual sum of £—: AND WHEREAS the said A. B. has agreed to sell some of the hereditaments comprised in the second schedule hereto, and intends shortly to sell the residue of the same hereditaments, and in order to facilitate such sales he is desirous of charging the said annual sum of £— exclusively on the hereditaments comprised in the first schedule hereto, and in exoneration of the hereditaments comprised in the second

schedule: NOW THIS INDENTURE WITNESSETH, that for the purpose of effectuating his aforesaid desire, the said A. B. doth hereby demise unto the said C. D. and E. F., their executors, administrators, and assigns, ALL AND SINGULAR the hereditaments mentioned and described in the first schedule hereto (*General words, all the estate, &c.*): To HOLD the same unto the said C. D. and E. F., their executors, administrators, and assigns, for the term of 1000 years, to be computed from the date of these presents, without impeachment of waste, upon the trusts following (that is to say), UPON TRUST and to the intent that the hereditaments hereby demised and the rents and profits thereof, shall be at all times henceforth an indemnity to the hereditaments comprised in the second schedule hereto, and every part thereof, and to the several purchasers and proprietors thereof, and of every part thereof, from and against the said annuity of £—, and all powers and remedies for enforcing the payment thereof, and from and against all actions, suits, distresses, claims, and demands, on account or in respect of the said annuity, AND UPON TRUST that in case any entry, distress, claim, or demand, shall at any time hereafter be made for on account of the said annuity, or any part thereof, upon the hereditaments comprised in the second schedule hereto, or the rents and profits thereof, or any part thereof respectively, or upon the person or persons for the time being entitled to the same, or his or their tenants, or any of them, then and in every such case the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, shall out of the rents and profits of the hereditaments hereby demised, or expressed so to be, or any part thereof, or by selling, mortgaging, or leasing the same, for all or any part of the said term of 1000 years, or by any other reasonable ways or means, raise such sum or sums as shall or may be required for the purpose of paying and discharging the said annuity, or such part thereof as shall be in arrear and unpaid, and all costs, damages, and expenses, which may be sustained or incurred by reason of any such entry, distress, claim, or demand as aforesaid, and all such other costs and expenses as may be incurred in the execution of the trusts and provisions of these presents, and shall apply the moneys to be so raised as aforesaid accordingly: AND UPON FURTHER TRUST that, subject and without prejudice to the trusts hereinbefore declared, the said trustees or trustee shall permit the rents and profits of the here-

DEMISE OF  
LANDS BY  
WAY OF  
INDEMNITY  
AGAINST  
RENT-  
CHARGE.

Witnessing  
part.  
Demise of  
lands in first  
schedule to  
trustees for  
a term of  
years.

Upon trust  
to indem-  
nify lands  
in second  
schedule  
from annual  
sum.

DEMISE OF  
LANDS BY  
WAY OF  
INDEMNITY  
AGAINST  
RENT-  
CHARGE

Covenants  
for title by  
grantor.

ditaments hereby demised, or expressed so to be, to be received by the said A. B., his heirs or assigns, or other the person or persons for the time being entitled to the same hereditaments in reversion immediately expectant on the said term of 1000 years: AND IT IS HEREBY declared, that if any sale, mortgage, or lease is made under the provisions of these presents, any such sale may be made either with or without any special or other stipulations as to title or otherwise, and any such mortgage may contain a power of sale and any other powers and provisions which may be thought expedient, and no purchaser, mortgagee, or lessee shall be concerned to ascertain that any of the circumstances contemplated by these presents as giving occasion for any such sale, or mortgage, or lease have arisen: AND IT IS HEREBY ALSO declared that the power of appointing new trustees conferred by statute shall apply to these presents: AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D. and E. F., their executors, administrators, and assigns, That notwithstanding any act, deed, or thing by the said A. B. done, executed, or knowingly suffered to the contrary, he the said A. B. now hath good right to demise the said hereditaments in manner aforesaid, free from incumbrances: AND FURTHER, that he the said A. B. and all persons having or lawfully or equitably claiming any estate or interest in the said hereditaments, or any part thereof, from, under, or in trust for him, will, from time to time and at all times hereafter during the said term of 1000 years, at the request of the trustees or trustee for the time being of these presents, but at the cost of the said A. B., his heirs or assigns, do and execute, or cause to be done and executed, all such acts, deeds, and things whatsoever for further and more perfectly demising the said hereditaments, and every part thereof, unto the said C. D. and E. F., their executors, administrators, and assigns, in manner aforesaid, as shall or may be reasonably required.

IN WITNESS, &c.

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THE FIRST SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

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THE SECOND SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

## No. XIII.

DECLARATION of TRUST of a SUM of STOCK invested  
in the names of TRUSTEES by way of INDEMNITY  
against a SUM of MONEY charged on LANDS which  
have been SOLD to several PURCHASERS.

DECLARA-  
TION OF  
TRUST OF  
STOCK BY  
WAY OF  
INDEMNITY.

THIS INDENTURE, made the — day of — BETWEEN Parties.  
A. B. of, &c. (*vendor of lands*), of the one part, and C. D. of,  
&c., and E. F. of, &c. (*trustees*), of the other part (*Recitals show-* Recite  
*ing that under a settlement and disentailing assurance in the* settlement,  
*events which happened A. B. became absolutely seised in fee* &c.  
*simple of lands subject to a sum of £— charged thereon for*  
*the portions of his younger brothers and sisters): AND WHEREAS* Sales of  
the said A. B. has lately sold the hereditaments comprised in land com-  
the said recited indenture of settlement to several persons, and prised in  
the particulars of the said several sales and the names of the settlement.  
several purchasers are set forth in the schedule hereto: AND Agreement  
WHEREAS on the treaty for the said several sales it was stipu- for indem-  
lated and agreed that the sum of £— should be invested by nity.  
the said A. B. in the names of trustees, to be held by them upon Purchase of  
the trusts hereinafter declared concerning the same: AND consols in  
WHEREAS in pursuance of the said agreement the said A. B. has the names  
invested the sum of £— in the purchase, in the names of the of trustees.  
said C. D. and E. F., of the sum of £— £3 per Cent. Consoli-  
dated Annuities: NOW THIS INDENTURE WITNESSETH, Witnessing  
that in further pursuance of the said agreement, and in consi- part.  
deration of the premises, IT IS HEREBY AGREED AND DECLARED Declaration  
that the said C. D. and E. F., their executors, administrators, of trust of  
and assigns, shall stand possessed of the said sum of £— £3 consols.  
per Cent. Consolidated Annuities, upon the trusts following  
(that is to say), UPON TRUST that the said C. D. and E. F., or Upon trust  
the survivor of them, or the executors or administrators of such to apply  
survivor, do and shall when as the said sum of £— by the same in  
said indenture of settlement charged on the hereditaments payment of  
therein comprised for portions as aforesaid, or any part or parts portions in  
thereof, shall become payable, levy and raise the same sum of exoneration  
£—, or such part or parts thereof as shall from time to time of settled  
become payable as aforesaid, and all interest (if any) which lands.

DECLARA-  
TION OF  
TRUST OF  
STOCK BY  
WAY OF  
INDEMNITY.

shall become due in respect thereof, by the sale of a competent part of the said sum of £—— £3 per Cent Consolidated Annuities, and shall apply the moneys to be so raised as aforesaid accordingly, To THE END and intent that the hereditaments comprised in the said indenture of settlement, and the several purchasers of the same respectively, and all other persons for the time being entitled to or interested in the same, shall and may at all times hereafter be exonerated and discharged of and from the payment of the said sum of £—— charged on the said hereditaments for portions as aforesaid and every part thereof, and may be indemnified against the same sum and every part thereof, and all claims and demands for or in respect of the same, with and by means of the said sum of £—— £3 per Cent. Consolidated Annuities, and the proceeds of the sale thereof, AND SUBJECT to the trust aforesaid, do and shall stand possessed of the said sum of £—— £3 per Cent. Consolidated Annuities, IN TRUST for the said A. B., his executors, administrators, and assigns, and so that until the said sum of £—— shall become raisable for portions as aforesaid, the dividends of the said sum of £—— £3 per Cent. Consolidated Annuities, or of such part thereof as shall not for the time being have become saleable under the trust aforesaid shall be paid to the said A. B. his executors, administrators, and assigns.

IN WITNESS, &c.

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THE SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN  
INDENTURE.

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#### No. XIV.

TRUST OF  
PURCHASE-  
MONEY AS  
INDEMNITY  
AGAINST  
DEFECT OF  
TITLE.

DECLARATION of TRUST of purchase money of NEXT  
PRESENTATION to a VICARAGE, by way of INDEMNITY to purchaser against possible DEFECT of TITLE, the same NOT having been fully INVESTIGATED to save expense.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*vendör*), of the first part, C. D. of, &c. (*purchaser*), of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*), of the third part (*Recite indenture of even date, being a grant*

Recite  
grant of

*of the next presentation by A. B. to C. D.):* AND WHEREAS the Rev. — is the present incumbent of the said vicarage : AND WHEREAS, in order to save expense, the title of the said A. B. to the said next presentation has not been investigated by or on the part of the said C. D. as fully as he was entitled to investigate the same, and it has been therefore agreed that in order to indemnify the said C. D., his executors, administrators, and assigns from any adverse claim which may hereafter be made to the said next presentation, the whole of the said purchase-money of £1500, instead of being paid to the said A. B. as is expressed in the said indenture, shall be paid to the said E. F. and G. H., to be held by them upon the trusts hereinafter declared concerning the same, and the same has been so paid accordingly, as they the said E. F. and G. H. do hereby acknowledge, AND it has also been agreed that the said A. B. shall enter into such covenant as is hereinafter on his part contained : NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the premises, IT IS HEREBY AGREED AND DECLARED that the said E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor (hereinafter called the trustees or trustee), do and shall with the consent in writing of the said C. D. and A. B. or their respective executors, administrators, or assigns, invest the said sum of £1500 in the names or name of the trustees or trustee in or upon any of the parliamentary stocks or public funds of the United Kingdom, or upon government or real securities in England or Wales (but not in Ireland), and from time to time, or at any time with the like consent, vary such investment into or for others of the same or a like nature, AND do and shall permit the said A. B., his executors, administrators, or assigns, to receive the income of the said trust moneys, stocks, funds, and securities until the next avoidance of the said vicarage by the death, resignation or cession, of the said present incumbent, or by any other means whatsoever, AND from and after such next avoidance as aforesaid, do and shall retain in their or his hands or hand the income of the said trust premises during the space of six calendar months then next ensuing, or if any person shall in the meantime make any claim to the next presentation adversely to the claim or title of the said C. D., his executors, administrators, or assigns, and not derived from or under him or them, and an

TRUST OF  
PURCHASE-  
MONEY AS  
INDEMNITY  
AGAINST  
DEFECT OF  
TITLE.

next pre-  
sentation.  
Agreement  
for indem-  
nity.

Witnessing  
part.

Declaration  
that trustees  
shall invest  
purchase-  
money.

In trust to  
pay income  
to vendor  
until  
vacancy.

TRUST OF  
PURCHASE-  
MONEY AS  
INDEMNITY  
AGAINST  
DEFECT OF  
TITLE.

If purchaser  
shall be  
deprived of  
next presen-  
tation by  
an adverse  
claim, then  
in trust for  
purchaser ;

but other-  
wise, in  
trust for  
vendor.

Covenant  
by vendor  
if purchaser  
is deprived,  
to repay  
interest  
and costs.

Purchaser  
not to be  
precluded  
from suing  
on cove-  
nants for  
title.

action of *quare impedit* or any other proceedings shall, at the expiration of such six calendar months, be pending in respect of such adverse claim or claims, then until the release, abandonment, or final adjudication of the same : AND IT IS HEREBY AGREED AND DECLARED, that if the said C. D. shall, under any verdict or judgment in any such action or other proceedings or otherwise by reason of such adverse claim or title as aforesaid, be lawfully and rightfully deprived of the said next presentation without any neglect, connivance, or default on his or their part, then and in such case the said trustees or trustee do and shall hold the said trust moneys, stocks, funds, and securities, together with the income which shall have been so retained by them or him as aforesaid, IN TRUST for the said C. D., his executors, administrators, and assigns, and do and shall transfer and pay the same to him or them accordingly ; BUT if such case as last aforesaid shall not happen, then do and shall hold the said trust moneys, stocks, funds and securities, and income, in trust for the said A. B., his executors, administrators, and assigns, for his and their absolute use and benefit, and do and shall transfer and pay the same respectively to him or them accordingly : AND THE SAID A. B. doth hereby for himself, his heirs, executors and administrators, covenant with the said C. D. his executors and administrators, that if the case shall happen in which the said trustees or trustee are or is hereinbefore directed to hold the said trust premises in trust for the said C. D., his executors, administrators, and assigns, he the said A. B., his heirs, executors, administrators, or assigns, will repay unto the said C. D., his executors, administrators, or assigns, all such sums of money as shall in the meantime have been received by the said A. B., his executors, administrators, or assigns, for the income of the said trust premises under the trust in that behalf hereinbefore declared, and also all such costs, charges, and expenses as he the said C. D., his executors, administrators, or assigns may have incurred or sustained in or about or in respect of the purchase of the said next presentation, or in or about the resisting of any such adverse claim or claims as aforesaid, or otherwise in relation to the premises : PROVIDED ALWAYS and it is hereby agreed and declared, that nothing in these presents contained shall preclude the said C. D., his executors, administrators, or assigns, in case of his or their being so deprived of the said next presentation as aforesaid from instituting any

action or other proceeding against the said A. B., or any other person whomsoever, upon the covenants for title contained in the said indenture of even date herewith, or in any other deed affecting the said premises, but so, nevertheless, that in case the said C. D., his executors, administrators, or assigns, shall elect to institute any such action or other proceedings as last aforesaid, the damages (if any) recovered therein shall be accepted by him or them in full satisfaction for all benefit or advantage to which he or they would otherwise have been entitled under the trusts and covenants hereinbefore contained, and in such case the said trustees or trustee shall and do hold all the said trust moneys, stocks, funds, and securities, and the income thereof which shall have been so retained as aforesaid, IN TRUST, in the first place, for securing the payment of the full amount of the damages to be so recovered as aforesaid, and by way of collateral security for the same, and, subject thereto, IN TRUST for the said A. B., his executors, administrators, and assigns, for his and their absolute use and benefit: AND THE SAID C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors and administrators, that if any adverse claim shall be made to the said next presentation, he the said C. D., his executors, administrators, or assigns, will immediately thereupon give information thereof to the said A. B., his executors or administrators; PROVIDED ALWAYS, and it is hereby agreed and declared, that if any adverse claim shall be made to the said next presentation, and the said A. B., his executors or administrators, shall be desirous of bringing any action for compensation or damages against the original grantor of the said next presentation or his representatives by virtue of such grant, he the said A. B., his executors or administrators, shall be at liberty to use the name or names of the said C. D., his executors or administrators, or assigns, in such action, he the said A. B., his executors or administrators, indemnifying the said C. D., his executors, administrators, or assigns, from all costs, charges, and expenses incurred or sustained thereby: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that if the said E. F., or any trustee appointed under this present power, shall die or go to reside abroad, or desire to retire from or refuse or become incapable to act in the trusts of these presents, then and so often as the same shall happen it shall be lawful for the said A. B., his executors

TRUST OF  
PURCHASE-  
MONEY AS  
INDEMNITY  
AGAINST  
DEFECT OF  
TITLE.

Covenant  
by pur-  
chaser to  
give  
information  
to vendor  
of adverse  
claim.

Power to  
appoint new  
trustees.



TRUST OF  
PURCHASE-  
MONEY AS  
INDEMNITY  
AGAINST  
DEFECT OF  
TITLE.

or administrators, to appoint a new trustee in the place of the trustee so dying or going to reside abroad, or desiring to retire, or refusing or becoming incapable to act as aforesaid (*Similar power to C. D., his executors or administrators, to appoint a new trustee in the place of G. H., or any trustee succeeding him*): AND IT IS HEREBY DECLARED, that upon every such appointment as aforesaid the trust premises shall be so transferred as that the same may be effectually vested in the new trustee or trustees, either jointly with the continuing trustee or trustees, or solely as the case may require, and every such new trustee shall have all the powers and authorities of the trustee in whose place he shall be substituted.

IN WITNESS, &c.

### No. XV.

RELEASE OF  
PART OF  
LAND FROM  
RENT-  
CHARGE.

### RELEASE of PART of LANDS charged with a RENT-CHARGE (a).

Parties.

Recite that  
all the here-  
ditaments  
subject to  
rent-charge  
remain  
vested in  
release.

Agreement  
to release.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of &c. (*releasor*), of the one part, and C. D. of, &c. (*releasee*), of the other part (*Recite indenture under which "the hereditaments described in the schedule hereto, with other hereditaments," are charged with a rent-charge payable to A. B., and, subject to such rent-charge, are vested in C. D. in fee*): AND WHEREAS all the hereditaments comprised in the hereinbefore recited indenture still remain vested in the said C. D. in fee simple, as he doth hereby declare: AND WHEREAS the said C. D., being about to sell the hereditaments described in the schedule hereto, has applied to and requested the said A. B. to release the same from the said yearly rent-charge of £—— limited to him by the hereinbefore recited indenture as aforesaid, which the said A. B. has agreed to do, being satisfied that

(a) By the 22 & 23 Vict. c. 35, s. 10, it is provided that the release from a rent-charge of part of the hereditaments charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release.

the other hereditaments comprised in the same indenture are a sufficient security for the said rent-charge: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the premises, the said A. B. doth hereby release, exonerate, and discharge, all and singular the pieces or parcels of land and hereditaments described in the schedule hereto, with their and every of their rights, members, and appurtenances, of and from the said yearly rent-charge of £—— limited to the said A. B. by the hereinbefore recited indenture as aforesaid, and from all actions, claims, and demands whatsoever for or in respect of the same or any part thereof: PROVIDED ALWAYS, that the hereditaments comprised in the hereinbefore recited indenture other than the hereditaments hereby expressly released, shall remain subject to the same yearly rent-charge, and the powers and remedies for enforcing payment thereof, as if these presents had not been executed.

RELEASE OF  
PART OF  
LAND FROM  
RENT-  
CHARGE.

Witnessing  
part.

Release of  
lands in  
schedule  
from  
rent-charge.

IN WITNESS, &c.

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THE SCHEDULE REFERRED TO IN THE ABOVE-WRITTEN INDENTURE.

## COPARTNERSHIP DEEDS (a).

### No. I.

BETWEEN  
TWO  
PERSONS.

#### DEED of COPARTNERSHIP *between* TWO PERSONS.

Parties.

THIS INDENTURE, made the — day of —, BETWEEN  
A. B. of, &c. (*one partner*), of the one part, and C. D. of, &c.

Definition  
of a partner-  
ship.

(a) It is difficult to frame a precisely accurate definition of a partnership. The attempted definitions of several learned lawyers have been collected by Mr. Justice Lindley in his work (3rd edition, pp. 2, 3) ; none of which exactly agree. It may, however, be stated that participation in profits *prima facie* constitutes each person so participating a partner, and renders him liable to losses, and this rule applies as regards third persons even though the agreement between the parties may expressly provide to the contrary (*Waugh v. Carver*, 2 H. Bl. 491). But participation in profits is not in every case conclusive, as there may be circumstances to rebut the inference of partnership, as where under a deed of arrangement between an insolvent firm and its creditors, trustees were directed to carry on the business under a new title for the benefit of the creditors until their debts were paid, it was held that the creditors were not partners, and the test was stated to be whether the trustees were carrying on the business as their agents, and the fact that they were not entitled to the profits to an indefinite extent but only until their debts were paid, was relied on as rebutting the presumption that they were the owners of the business standing in the relation of principals to the persons ostensibly carrying on the trade (*Cox v. Hickman*, 8 H. L. C. 268).

Provisions  
of Partner-  
ship Amend-  
ment Act.

By the 28 & 29 Vict. c. 86, it is provided (sects. 1 and 2) that the advance of money by way of loan to a person engaged or about to engage in any trade or undertaking upon a contract in writing with such person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on such trade or undertaking, shall not of itself constitute the lender a partner with the person or persons carrying on such trade or undertaking or render him responsible as such ; and that no contract for the remuneration of a servant or agent of any person engaged in any trade or undertaking by a share of the profits of such trade or undertaking shall of itself render such servant or agent responsible as a partner therein, nor give him the rights of a partner, and the 3rd sect. provides that no person being the widow or child of the deceased partner of a trader, and receiving by way of annuity a portion of the profits made by such trader in his business shall by reason only of such receipt be deemed to be a partner of or to be subject to any liabilities incurred by such trader ; and the 4th sect. declares that no person receiving by way of annuity or otherwise a portion of the profits of any business in consideration of the sale by him of the goodwill of such business, shall by reason only of such receipt be deemed to be a partner of or be subject to the liabilities of the person carrying on such

(*other partner*), of the other part: WITNESSETH that the said A. B. and C. D. do hereby mutually covenant and agree to become and be partners in the trade or business of —, upon and subject to the terms, conditions, and stipulations expressed in the following Articles (that is to say):—

BETWEEN  
TWO  
PERSONS.

itnesseth.

Mutual  
covenant  
to become  
partners.

Duration of  
partnership.

I. THE said partnership shall continue for the term of twenty-one years from the date of these presents: PROVIDED ALWAYS, that if either of the said partners shall desire to determine the said partnership at the end of seven or fourteen years, computed from the date of these presents, and of such his desire shall give six calendar months' previous notice in writing to the other of them, or shall leave such notice at the place where the said business shall for the time being be carried on, then and in such case immediately upon the expiration of the said seven or fourteen years (as the case may be), the said partnership shall cease and determine.

II. THE firm and style of the said partnership shall be — & Co.

Title of  
firm.

III. THE partnership business shall be carried on at or upon the leasehold premises being No. —, — street, in the city of —, held by the said A. B. and C. D. under a lease, dated the — day of —, at the yearly rent of £—, or at such other place as shall from time to time be agreed on by the said partners.

Place of  
business.

IV. THE capital of the said partnership shall consist of the sum of £—, to be brought in by the said partners in equal shares, and to be made up as follows (that is to say), the imple-

Capital.

business. By the 5th sect. it is provided that in the event of the trader being made a bankrupt, or entering into an arrangement to pay his creditors less than 20s. in the pound, or dying insolvent, the lender shall not recover any part of his principal or of the profits or interest payable in respect of such loan, and that the vendor of such goodwill as aforesaid shall not recover any such profits until the claims of the other creditors of the trader for valuable consideration in money or money's worth have been satisfied.

The above enactment has been criticised, as being founded to some extent on a misapprehension of the law as it stood when the Act passed, there being no rule (as is supposed in the Act) that a loan of money on an agreement that interest should be paid varying with the profits would constitute the lender a partner. And it has been held that the Act does not apply to any contract unless the advance of money would, independently of the Act, have created the relation of debtor and creditor as distinguished from the relation of partners, and a declaration in the deed that the lender shall not be a partner will be nugatory, if the result of the agreement, as a whole, is to give him the rights and impose on him the obligations of a partner (*Pooley v. Driver*, L. R. 5 C. D. 458; *Ex parte Delhasse*, L. R. 7 C. D. 511).

BETWEEN  
TWO  
PERSONS.

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ments and plant now used in the said business shall be deemed to be of the value of £—, and to be brought in by the said partners in equal shares, and the further sum of £— shall be paid to the credit of the said partnership by the said partners in equal shares, immediately after the execution of these presents.

Advances  
by partners  
to bear  
interest.

V. If either of the partners shall at any time hereafter, with the consent of the other partner, advance any money to the said partnership beyond the amount of the capital hereby agreed to be brought in by him, the same shall be a debt to him from the partnership, payable on demand, and shall bear interest after the rate of £5 per cent. per annum, computed from the time of such advance.

Bankers.

VI. THE bankers of the said partnership shall be Messrs. — & Co., at—, or such other bankers as shall be from time to time agreed on by the said partners. Each of the said partners shall be at liberty to draw cheques in the name of the firm.

Payment of  
rent,  
salaries,  
and other  
outgoings.

VII. THE rent of the said leasehold premises, or of any other premises where the said business shall for the time being be carried on, and the cost of repairs and alterations, and all rates, taxes, payments for insurance, and other outgoings whatsoever, in respect of the same, and the wages and salaries of all persons employed in the said business, and all other moneys to become payable upon account of the said business, and all losses which shall happen in the same, shall be paid and borne out of the gross profits of the said partnership business, or if the same shall be deficient, shall be paid and borne by the said partners in equal shares.

Profits

VIII. THE net profits of the said business shall belong to the said partners in equal shares.

Books of  
account to  
be kept.

IX. PROPER books of account shall be kept by the said partners, and entries made therein of all such matters, transactions, and things as are usually written and entered in books of account kept by persons engaged in concerns of a similar nature, and such books, together with all securities, letters, and other things belonging to or concerning the said partnership, shall be kept at the office where the partnership business shall for the time being be carried on, and each of the said partners shall have free access to inspect, examine, and copy the same, whenever he shall think fit.

X. EACH of the said partners shall devote his whole time and attention to the said partnership business, and neither of them shall, directly or indirectly, be engaged in any other business.

BETWEEN  
TWO  
PERSONS.

Partners to  
give whole  
time to  
business.

XI. EACH of the said partners shall be just and faithful to the other of them in all transactions relating to the said partnership, and shall at all times give the other of them a just and faithful account of the same, without any concealment or suppression, and shall also, upon every reasonable request, furnish a full and correct explanation thereof to the other of them.

Partners to  
be faithful  
to each  
other.

XII. NEITHER of the said partners shall, without the written consent of the other of them, employ any of the moneys, goods, or effects belonging to the said partnership, or engage the credit thereof, in any matter or thing except upon the account of the said partnership.

Neither  
partner to  
employ the  
partnership  
capital  
without the  
consent of  
the other.

XIII. NEITHER of the said partners shall take any apprenticeship without the consent of the other of them, or (except for flagrant misconduct) discharge any clerk or servant in the business of the said partnership without the consent of the other of them.

Neither  
partner to  
take  
apprentice  
without the  
consent of  
the other.

XIV. NEITHER of the said partners shall lend any of the moneys, or deliver upon credit any of the goods belonging to the said partnership, to any person or persons whom the other of them shall, by notice in writing, have forbidden him to trust.

As to  
lending  
money to  
persons  
whom the  
other  
partner has  
forbidden  
to trust.

XV. NEITHER of the said partners shall, without the written consent of the other of them, release or compound for any debt or right due or belonging to, or any action brought by the said partnership; and if either of them shall do so, the partner so releasing or compounding for any such debt, right, or action, without such consent as aforesaid, shall, if required by the other of them, pay to the said partnership the full amount or value of the debt, right, or claim which he shall so release or compound for.

Neither  
partner to  
compound  
debts, &c.

XVI. NEITHER of the said partners shall, without the previous consent in writing of the other of them, enter into any bond, confess judgment, or become bound as bail, surety, or security with or for any person or persons whomsoever, or subscribe any policy of insurance, or do or knowingly cause to be done any act, deed, matter, or thing whereby the stock and effects of the said partnership may be seized, attached, extended, or taken in execution.

Nor enter  
into any  
bond or  
become bail  
or surety.

BETWEEN  
TWO  
PERSONS.

Each  
partner to  
pay his own  
personal  
debts.

Annual  
accounts.

Division of  
profits after  
each  
annual  
account.

Partners to  
set apart  
a reserved  
fund out of  
profits.

XVII. EACH of the said partners shall from time to time duly and punctually pay and discharge the debts now due and owing, or hereafter during the said partnership to be due and owing, from him to any person or persons whomsoever; and shall at all times keep indemnified the other partner, and all the stock, moneys, and effects of the said partnership, from and against his private and separate debts and engagements, and from and against all claims and demands in respect thereof.

XVIII. ON the 31st day of December in every year during the continuance of the said partnership, a general account shall be taken up to the same 31st day of December, of the stock in trade, credits, property, and effects, debts and liabilities of the said partnership, and every such annual account shall be entered in two books, and be signed in each such book by each of the said partners, and after such signature each of them shall keep one of the said books, and shall be bound by such account, except that if any manifest error be found therein by either of the said partners, and be signified to the other of them within three calendar months after the same shall have been so signed by both of them, such error shall be rectified.

XIX. IMMEDIATELY after the signing of each such account the net profits of the said business for the then preceding year shall be divided between the said partners in equal shares [subject to the deduction directed by Article 20].

[XX. THE said partners shall in every year during the continuance of the said partnership set apart a proportion of the net profits of the said business at the rate of £10 for every £100 of the same, in and for every such year, and invest the same in their joint names in any joint-stock bank or banks in England, to be mutually agreed upon, which may be willing to pay interest thereon, or at interest upon Government, real, or any other kind of security or securities whatsoever, to be mutually agreed upon, with power to vary the investments from time to time as they may think proper, for any other investments whatsoever, and that every sum so set apart as aforesaid, and the investments for the same, shall constitute a reserved fund, and be placed to a separate account, and be entitled "The Reserved Account," which reserved fund shall be applicable in or towards purchasing or supplying any new plant or stock which may from time to time be required for the purposes of the said partnership, or in or towards defraying the expenses of repairing or

improving the plant or stock for the time being of the said partnership, or in repaying to the said partnership any losses which it may sustain in consequence of default being made in payment of any debt or debts which may for the time being be due to the said partnership, and may be considered bad or desperate. The interest or income arising from such reserved fund in each year shall be deemed part of the profits of the said business for that year, and be divided accordingly.]

BETWEEN  
TWO  
PERSONS.

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XXI. EACH of the said partners shall be at liberty to draw out of the cash of the said partnership the sum of £—— on the first day of every month for his personal expenses, the sums so drawn out to be accounted for by the said partners respectively on the taking of the annual accounts hereinbefore directed, and if the sums so drawn out by either partner in any one year shall exceed the amount of his share in the net profits of the said business for that year, he shall forthwith repay the excess to the said partnership concern.

Power to  
partners to  
draw out  
monthly  
sums for  
personal  
expenses.

[XXII. If upon taking any such annual account as aforesaid it shall appear that the said partnership business has not been carried on during the then preceding year so as to produce any profits for the benefit of the said partners, after payment of the expenses attending the said business, and after allowing to each partner interest after the rate of £5 per cent. per annum on the amount of his capital for the time being in the said business, it shall be lawful for either of the said partners, at any time within one calendar month from the time of the taking such account, to give a notice in writing to the other partner of his desire that the said partnership shall determine, or to leave such notice at the place where the partnership business shall for the time being be carried on, and in such case the said partnership shall cease and determine immediately upon the giving or leaving of such notice.]

Power to  
either  
partner to  
determine  
partnership  
in the  
event of no  
profits.

XXIII. WITHIN the space of six calendar months after the determination of the said partnership, during the joint lives of the said partners, a general account shall be taken of all the stock in trade, credits, property and effects, debts and liabilities, of the said partnership, and as soon as conveniently can be after such account shall have been taken, the outstanding debts owing to the said partnership shall be collected and got in, and the plant, stock in trade, and other effects of the said partnership capable of sale, shall be sold, either by public auction

Final  
account and  
division  
upon  
determina-  
tion of  
partnership



BETWEEN  
TWO  
PERSONS.

or private contract, with liberty for either partner to bid for and purchase the same or any part thereof, and the moneys which shall arise by the means aforesaid, and all other the moneys of the said partnership, shall be applied in manner following (that is to say):—1st. In payment of the costs and expenses attending the winding-up of the partnership estate under this article. 2ndly. In payment and discharge of the debts and liabilities of the said partnership. 3rdly. In repayment to each of the said partners of the amount of capital brought by him into the said partnership concern, with such interest as may be due thereon. And lastly, the surplus of the said moneys shall be divided between the said partners in equal shares.

Final  
account and  
division  
on death  
of one  
partner ;

subject to a  
power for  
surviving  
partner  
to purchase  
share of  
deceased  
partner at a  
valuation.

XXIV. If either of the said partners shall die during the continuance of the said partnership, the like account and division shall be taken and made between the surviving partner and the executors or administrators of the deceased partner as are hereinbefore directed to be taken and made between the partners on the determination of the said partnership during their joint lives : PROVIDED NEVERTHELESS that the surviving partner shall be at liberty to take at a valuation the share of the deceased partner in the stock in trade, credits, property, and effects, of the said partnership, upon giving to the executors or administrators of the deceased partner notice in writing of his intention in that behalf at any time within three calendar months from the decease of such partner, such valuation to be made by two indifferent persons, or their umpire, to be appointed respectively as hereinafter is provided in the case of arbitrators and their umpire upon a reference to arbitration ; and the amount of such valuation shall be paid by the surviving partner to the executors or administrators of the deceased partner by four equal instalments, at the expiration of six, twelve, eighteen, and twenty-four calendar months respectively, from the decease of such partner, with interest for the same or the instalments thereof for the time being remaining unpaid after the rate of £5 per cent. per annum, and shall be secured by the bond of the surviving partner in a sufficient penalty. The surviving partner shall also execute a bond in a sufficient penalty to the executors or administrators of the deceased partner for indemnifying them and the estate and effects of the deceased partner from and against the debts and liabilities of the said partnership, and all claims and demands in respect thereof, and

such executors or administrators shall at the request and cost of the surviving partner do and execute all acts, deeds, and things necessary or proper for vesting in the surviving partner the aforesaid share of the deceased partner, and for enabling the surviving partner to collect and get in the credits and effects of the said partnership.

BETWEEN  
TWO  
PERSONS.

XXV. IF either of the said partners shall, during the continuance of the said partnership, become a lunatic, or otherwise incapable of assisting in the management of the said business (unless such incapacity shall arise from any personal accident incurred in connection with the said business), or shall become a bankrupt, or make any composition with his creditors, or allow his affairs to be liquidated by arrangement under the provisions of the bankrupt laws, or shall make, draw, accept, indorse, or negotiate any promissory note or bill of exchange, or give any security in the partnership name, except upon account of the said partnership business, or do, or wilfully suffer to be done, any act or thing whereby the partnership property and effects or any part thereof shall be seized or taken in execution, or shall refuse or neglect to account for any sum of money received by him in the partnership business, or shall wilfully conceal from the other partner any sum of money for the space of thirty days after he shall have received the same, then and in any of the said cases it shall be lawful for the other partner at any time within three calendar months after the discovery of such lunacy, incapacity, bankruptcy, offence, or default to expel the partner so becoming lunatic, incapable, or bankrupt, or so offending or making default as aforesaid, from the said partnership concern, by giving him a notice in writing in that behalf, or leaving such notice for him at the place where the said business shall for the time be carried on, and immediately on the giving or leaving of such notice as aforesaid, the said partnership shall cease and determine; and thereupon the partner giving such notice as aforesaid shall have the like option of purchasing the share of the expelled partner in the stock in trade, credits, property and effects of the said partnership at a valuation as is by Article 24 given to the surviving partner to purchase the share of a deceased partner; and in case the partner giving such notice shall elect to purchase the said shares, such bonds, acts, deeds, and things shall be respectively executed and done by and between the partner giving such notice as aforesaid, and the

Power to  
one partner  
to expel  
the other  
in certain  
events.

BETWEEN  
TWO  
PERSONS.

expelled partner respectively, as would or ought to have been executed and done respectively by and between the surviving partner and the executors or administrators of such expelled partner, if the last-mentioned partner had died on the day on which he shall be so expelled as aforesaid, and the surviving partner had elected to purchase his share under the power in that behalf conferred by Article 24.

Arbitration  
clause.

XXVI. IF during the continuance of the said partnership, or at any time afterwards, any difference shall arise between the said partners, or between one of them and the executors or administrators of the other of them, or between their respective executors or administrators, in regard to the construction of any of the articles herein contained, or to any division, act, or thing to be made or done in pursuance hereof, or to any other matter or thing relating to the said partnership or the affairs thereof, such difference shall be forthwith referred to two arbitrators, one to be appointed by each party in difference, or to an umpire to be chosen by the arbitrators before entering on the consideration of the matters referred to them, and every such reference shall be deemed an arbitration within the Common Law Proce du Act, 1854, and be subject to the provisions as to arbitration contained in the said Act.

IN WITNESS, &c.

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## No. II.

BETWEEN  
SHIP AND  
INSURANCE  
BROKERS,  
WITH  
SPECIAL  
CLAUSES.

### DEED of COPARTNERSHIP *between SHIP and INSURANCE BROKERS with Special Clauses.*

Parties.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*one partner*), of the one part, and C. D. of, &c. (*other partner*), of the other part: WHEREAS the said A. B. hath for some years carried on the trade or business of a ship and insurance broker and agent at —, and the said A. B. hath agreed to admit the said C. D. into partnership with him in the trade or business aforesaid, for the term and under the stipulations hereinafter expressed: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D. do hereby mutually covenant and agree to become and be partners in the trade or business of ship and insurance brokers, upon and subject to the terms, conditions, and stipulations expressed in the following articles (that is to say): —

Mutual  
covenants  
to become  
partners.

I. THE said partnership shall continue for the term of fourteen years, computed from the day of the date hereof, unless sooner dissolved under the provisions in that behalf hereinafter contained.

BETWEEN  
SHIP AND  
INSURANCE  
BROKERS,  
WITH  
SPECIAL  
CLAUSES.

II. THE firm and style of the said partnership shall be B. and D.

Duration of  
partnership.  
Title of  
firm.  
Place of  
business.

III. THE partnership business shall be carried on in the two rooms in the ground floor of No. —, where the business has been heretofore carried on by the said A. B., or at such other place as shall from time to time be agreed on by the said partners.

IV. THE said C. D. shall immediately after the execution of these presents pay the sum of £—— into the — Bank to the credit of the said partnership, as capital for carrying on the said business, which sum of £—— shall remain in the said business during the continuance thereof.

Present  
capital.

V. IF any further capital shall be required for carrying on the said business, the same shall be advanced by the said partners in the shares in which they shall for the time being be entitled to the net profits of the said business.

Further  
capital.

VI. EACH of the said partners shall receive interest after the rate of £5 per cent. per annum, upon or in respect of his capital for the time being in the said business, such interest to be computed from the time of advancing the same, and such interest shall be allowed before any division shall be made between the said partners of the net profits of the said business. The interest payable to the said C. D. in respect of the said sum of £—— shall commence from the date of these presents.

Each  
partner to  
receive  
interest  
on sums  
advanced.

VII. THE said partners shall be entitled to the profits of the said business in the proportions following, namely, the said A. B. to two-third parts thereof, and the said C. D. to the remaining one-third part thereof, and all losses happening in the course of the said business shall be borne by them respectively in the like proportions (unless the same shall be occasioned by the wilful neglect or default of either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise) : PROVIDED ALWAYS that all commissions and sums of money payable to the said A. B. in respect of ships, the chartering or loading whereof is or was completed on or before the day of the date of these presents, and all losses, costs, and damages occasioned thereby, shall belong to, and be

Profits of  
business.

BETWEEN  
SHIP AND  
INSURANCE  
BROKERS,  
WITH  
SPECIAL  
CLAUSES.

Power to  
partners to  
draw out  
monthly  
sums for  
personal  
expenses.

Profits to  
be divided  
equally in  
a certain  
event.

One of the  
partners to  
be allowed  
rent for  
house

Payment  
of rent,  
salaries,  
outgoings,  
&c.

borne by, and be the exclusive property or loss of the said A. B.

VIII. THE said A. B. shall be at liberty from time to time to draw out of the said business any sum or sums of money not exceeding the sum of £—— per month for his own use; and the said C. D. shall also be at liberty to draw out of the said business any sum or sums not exceeding the sum of £—— per month for his own use, such sums to be duly accounted for by them respectively on every settlement of account and division of the profits of the said business; and if, upon every or any such settlement of accounts, it shall be found that the sums drawn out by either of the said partners under this article during the then preceding year shall exceed his share of the profits of the said business for that year, then and in every such case the partner so overdrawing as aforesaid shall repay the excess to the said partnership.

IX. THE said C. D. may, as and from the —— day of —— in any year, during the continuance of the said partnership, become entitled to an equal share with the said A. B. in the profits of the said partnership, upon giving to the said A. B. one calendar month's notice previously to the same —— day of ——, of his intention to avail himself of this provision, and upon payment to the said A. B., on the same —— day of ——, of the sum of £——: and in such case each of the said partners shall thenceforward be entitled to draw out of the said partnership the sum of £—— monthly, instead of the said sums of £—— and £——, as provided in Article 8.

X. THE said A. B. shall be allowed by the said partnership the clear yearly sum of £——, by way of rent for the aforesaid two rooms on the ground floor in No. —— aforesaid, so long as the said business shall be carried on therein, but the said rooms shall continue the sole property of the said A. B., subject only to be used for the purposes of the said partnership business.

XI. THE said rent of £——, and all other outgoings which shall become payable in respect of the said place of business, the costs of keeping the said rooms while used for the said business in good and substantial repair, the expense of providing coals and candles, and of paying clerks, porters, and servants to be employed in the same business, and all other disbursements and expenses which may be incurred by said partners respectively in the course of the said business, shall be paid and borne out of

the profits of the said business, and in case the same shall be insufficient for that purpose, then by the said parties hereto in the proportions wherein they shall for the time being be entitled to the profits of the said partnership business.

BETWEEN  
SHIP AND  
INSURANCE  
BROKERS,  
WITH  
SPECIAL  
CLAUSES.

XII. to XXI. (*Insert here Articles 9 to 18 inclusive from Precedent No. 1.*)

XXII. IMMEDIATELY after the taking of each such annual account as aforesaid the net profits of the said business for the then preceeding year shall be divided between the said partners in the shares in which they shall for the time being be respectively entitled to the same.

Division of  
profits after  
each annual  
account.

XXIII. XXIV. (*Insert here Articles 23 and 24 from Precedent No. 1, substituting for the words "in equal shares," at the end of Article 23, "in the shares in which they shall have been entitled to the net profits of the said business at the expiration of the said partnership."*)

XXV. If the said A. B. shall die during the continuance of the said partnership, the said C. D. shall have the option of purchasing from his representatives the messuage in — aforesaid, where the said business is carried on, for all the then residue of the term of fourteen years therein, now vested in the said A. B., the price to be as follows (that is to say), If the said A. B. shall die on or before the — day of — next, then the price to be £100, but if he shall die at any subsequent period, then the price to fall and be reduced £5 at the expiration of every clear period of six calendar months, during which the said A. B. shall survive the said — day of — next, but no fall or reduction shall be made on account of any period less than six calendar months, the purchaser to take subject to the payment of the yearly rent of £—— reserved by the lease of the same premises, and to the observance and performance of the covenants and conditions in the same lease contained, and on the lessee's part to be observed and performed; provided, however, that the said C. D. shall signify his intention of becoming the purchaser of the said messuage to the representatives of the said A. B. within twelve calendar months next after the decease of the said A. B., and the said C. D. shall, without requiring the production of the lessor's title, accept an assignment of the said premises for all the then residue of the said term subject as aforesaid, and shall enter into the usual covenant for the payment of the said rent, and the observance and performance of

Provisions  
for giving  
one of the  
partners the  
option of  
purchasing  
lease.

BETWEEN  
SHIP AND  
INSURANCE  
BROKERS,  
WITH  
SPECIAL  
CLAUSES.

the said covenants and conditions, and for indemnifying the said representatives and their estate and effects, and also the estate and effects of the said A. B. therefrom, such assignment and covenant to be prepared by and at the expense of the said C. D.

Special  
provisions  
in case of  
death  
of either  
partner  
before end  
of term.

XXVI. IF either of the said partners shall die during the continuance of the said partnership, leaving a widow, child or children him surviving, the surviving partner shall during the remainder of the said term of fourteen years hereby appointed for the continuance of the said partnership, if such surviving partner and also the widow or a child or children of the deceased partner, shall so long live, pay to the executors or administrators of the deceased partner (in addition to the moneys to which they will be entitled under Article 23) the annual sum of £——, by equal quarterly payments, the first of such payments to be made at the end of three calendar months next after the decease of the partner so dying as aforesaid, together with a proportionate part of the said annual sum of £—— for the period (if any) which shall elapse between the day of the decease of the partner so dying as aforesaid, or the last quarterly day of payment (as the case may be), and the day on which the said annual sum shall cease and determine.

(Insert here Articles 25 and 26 from Precedent No. 1, *supra*.)

### No. III.

#### DEED of COPARTNERSHIP *between* FOUR PERSONS.

BETWEEN  
FOUR  
PERSONS.

Parties.

Mutual  
covenants.

To become  
Partners  
for term  
determin-  
able.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*one partner*), of the first part, C. D. of, &c. (*another partner*), of the second part, E. F. of, &c. (*another partner*), of the third part, and G. H. of, &c. (*another partner*), of the fourth part, WITNESSETH, that the said A. B., C. D., E. F., and G. H., do hereby mutually covenant and agree to become and be partners in the trade or business of ——, upon and subject to the terms, conditions, and stipulations expressed in the following Articles (that is to say):

I. THE said partnership shall continue for term of fourteen years, computed from the date of these presents, determinable as hereinafter provided.

II. The firm and style of the said partnership shall be ——— .

BETWEEN  
FOUR  
PERSONS.

III. The business of the said partnership shall be carried on at the ——— works, in the city of ———, or at such other place or places as the partners shall from time to time determine, and a certain indenture bearing date the ——— day of ———, and made between ——— of the one part, and ——— of the other part, and the full benefit of the lease thereby granted, and of the provisions therein contained for the purchase of the property therein comprised, shall belong to and be the property of the said partnership.

Title of  
firm.  
Place of  
business.

IV. THE capital of the said partnership shall consist of the sum of £——, to be made up and brought into the said business by the said partners in equal shares of £—— each, and the capital to be so brought in by each partner shall not be reduced without the consent of all the partners for the time being, and each of the partners shall be entitled to interest at the rate of £5 per cent. per annum on the capital which he shall for the time being have actually paid up.

Capital.

V. THE sum of £——, being the share of capital to be brought in by the said A. B., shall be paid by him immediately after the commencement of the said partnership.

One partner  
to pay his  
share of  
capital at  
once.

VI. THE stock at the said ——— works in ——— street, the book-debts of or belonging to the business now carried on at the same works by the said C. D., E. F., and G. H., and the plant of or belonging to the said business, and other property constituting the assets of the late firm of "D. H. Brothers" (which firm consists of the said C. D., E. F., and G. H.), subject to the payment and discharge by the said last-mentioned firm of the liabilities thereof on the ——— day of ———, shall be taken to by the partnership firm intended to be hereby constituted. An account and valuation shall be made and taken by the said assets on the said ——— day of ———, and the net value of the said assets on that day shall be credited to the said C. D., E. F., and G. H., in the shares and proportions in which on the same day they shall be respectively entitled thereto in part of their respective shares of £—— each in the capital of the said intended partnership hereby agreed to be brought in by them as aforesaid. In the valuation of the said assets a deduction after the rate of £2 10s. per cent. per annum shall be made from all good debts due and owing to the said firm of D. H. Brothers, and if the said deduction of £2 10s. per cent. shall not ultimately cover the discount

Certain  
property of  
late firm to  
be valued  
and amount  
credited to  
members of  
late firm  
as part of  
their shares  
of capital.



BETWEEN  
FOUR  
PERSONS.

Further  
sums to be  
paid  
towards  
shares of  
capital.

Residue  
how to be  
paid

Rent,  
expenses,  
and losses  
to be borne  
by partners  
equally.

Profits to  
belong to  
partners  
equally.

One partner  
to take  
travelling  
department.

Each  
partner to  
give his  
whole time  
to business.

and losses on the same, an allowance shall be subsequently made to make up such discount and losses.

VII. IF the net value of the assets of the said late firm shall be less than the sum of £—, the said C. D., E. F., and G. H., shall immediately after the commencement of the said intended partnership pay in equal shares to the said partnership concern such a sum of money as, with the net value of the said assets, shall make up the sum of £—, which sum shall be credited to them the said C. D., E. F., and G. H., in further satisfaction of their respective shares of £— each in the capital of the said partnership hereby agreed to be brought in by them as aforesaid.

VIII. THE residue remaining unpaid of the said sums of £— hereby agreed to be brought in by the said C. D., E. F., and G. H. respectively, shall be paid out of their respective shares in the profits of the said partnership business under the provision in that behalf hereinafter contained.

IX. THE rent of the said leasehold premises in — street, or of any other premises where the said partnership business shall for the time being be carried on, and all taxes, rates, costs of repair, and insurance against loss by fire, and other outgoings whatsoever for or in respect of the same, and all costs, charges and expenses which shall be incurred in or about the said business, or in anywise relating thereto, and all losses which shall happen in the said business, shall be borne, sustained, and defrayed by the said partners in equal shares.

X. THE net profits of the said partnership shall belong to the said partners in equal shares.

XI. ALL cheques drawn on account of the said partnership shall be signed by two at least of the partners.

XII. THE said A. B. shall devote himself entirely to the travelling department of the said partnership business, and shall use his best endeavours in that department to extend the business and connections of the said partnership, and to promote the objects and interests thereof, and he shall keep and render to the other partners from time to time faithful accounts of all transactions done or entered into by him in his aforesaid department.

XIII. EACH of the said partners shall devote his whole time, attention, and abilities to the said partnership business, and no partner shall directly or indirectly be engaged in any other business.

XIV. EACH of the said partners shall be just and faithful to the others in all transactions relating to the said partnership, and shall at all times give to the other of them a just and faithful account of the same without any concealment or suppression, and shall also, upon every reasonable request, furnish a full and correct explanation thereof to the others.

BETWEEN  
FOUR  
PERSONS.

Partners to  
be faithful  
to each  
other.

XV. No partner shall, without the written consent of the others, employ any of the moneys, goods, or effects belonging to the said partnership, or engage the credit thereof, in any matter or thing except upon account of the said partnership.

Neither  
partner to  
employ the  
partnership  
capital  
without the  
consent of  
the others.

XVI. No partner shall take any apprentice without the consent of the others, or (except for flagrant misconduct) discharge any clerk or servant in the business of the said partnership without the consent of the others.

Neither  
partner to  
take  
apprentice  
without  
consent of  
others.

XVII. No partner shall lend any of the moneys, or deliver upon credit any of the goods belonging to the said partnership to any person or persons whom two other partners shall by notice in writing have forbidden him to trust.

Nor to lend  
money to  
persons  
whom the  
other  
partners  
have  
forbidden  
to trust.

XVIII. No partner shall, without the written consent of the other partners, release or compound for any debt or right due or belonging to, or any action brought by, the said partnership; and if either of them shall so do, the partner so releasing or compounding for any such debt, right, or action without such consent as aforesaid, shall, if required by the others of them, pay to the said partnership the full amount or value of the debt, right, or claim which he shall so release or compound for.

Neither  
partner to  
compound  
debts, &c.

XIX. No partner shall, without the previous consent in writing of the other partners, enter into any bond, confess judgment, or become bound as bail, surety, or security with or for any person or persons whomsoever, or subscribe any policy of insurance, or do or knowingly cause to be done any act, deed, matter or thing whereby the stock and effects of the said partnership may be seized, attached, extended, or taken in execution.

Nor enter  
into any  
bond or  
become bail  
or surety.

XX. EACH partner shall pay and discharge all the debts now due and owing, or hereafter during the continuance of the said partnership to become due and owing from him to any person or persons whomsoever, and shall keep indemnified the other partners, and the stock in trade, capital, and property of the said partnership from and against his private and separate debts and engagements, and all actions, costs, damages, and

Each  
partner to  
pay his  
separate  
debts.

BETWEEN  
FOUR  
PERSONS.

expenses on account thereof; and each of the partners shall deposit all moneys which he shall from time to time receive on account of the said partnership within ten days next after he shall have actually received the same, to the credit of the said partnership, with the bankers from the time being thereof, and shall be responsible and accountable for the loss of all moneys, bills, notes, and cheques which shall be paid to or received by him on account of the said partnership until he shall have deposited and paid the same respectively to the credit of the said partnership with the bankers thereof for the time being.

Books of  
account to  
be kept.

XXI. PROPER books of account shall be kept wherein the partners shall enter the particulars of all sums of money received and paid, and of all debts contracted by the said partnership, and of all other transactions, matters, and things in anywise conducing to the manifestation of the state of the said partnership concern, and the same books, together with all bills, specialties, letters, and other writings touching or concerning the partnership business, shall always remain and be kept in some convenient part of the counting-house for the time being of or belonging to the said partnership business, where each of the said partners shall and may have free access to the same.

Annual  
account.

XXII. ON the — day of — in every year during the continuance of the said partnership, a general account and valuation shall be taken and made up to the said — day of — of the stock in trade, credits, property, and effects, debts and liabilities of the said partnership, and of all matters and things usually comprehended in general accounts of a like nature, and in taking such account a proper allowance and deduction shall be made for or in respect of bad or doubtful debts owing to the said partnership. Every such general account shall be balanced by a professional accountant, and shall be written in four books, and be signed in each such book by each of the partners, and after such signature each of the said partners shall take one of the said books into his custody, and shall be bound by such account, save and except that, if within three calendar months after the same shall have been so signed by all the partners any manifest error shall be found in such account, and shall be signified by any of the said partners to the others of them, then and in such case such error shall be rectified.

Profits to  
be divided  
after each

XXIII. IMMEDIATELY after the signing and settling of each such annual account as aforesaid, each partner shall be entitled

to receive his share of the net profits of the said partnership business for the then past year, on bringing into account all monthly sums previously drawn out by him under the provision in that behalf hereinafter contained: Provided nevertheless that so long as any part of the said sum of £—— hereby agreed to be brought into the said business by each of them the said C. D., E. F., and G. H., shall remain unpaid, each of them the said C. D., E. F., and G. H., shall receive in every year out of his share of the said profits the sum of £—— only, and the surplus of his share of the said profits beyond the said sum of £—— shall remain in the said business, and be credited to him in part satisfaction of the said sum of £——, until by that means or otherwise the whole of the same sum shall have been fully paid.

BETWEEN  
FOUR  
PERSONS.  
annual  
account.

XXIV. IN each year during the said partnership it shall be lawful for each partner to draw out of the cash of the said partnership by equal monthly payments on the first day of every month, the sum of £30, on account of his accruing share of the profits of the said partnership business; but in case at the end of any year it shall appear, upon making the annual general account hereinbefore directed, that the sum, drawn out by any partner in that year, under this present article, shall exceed the amount of his share in the profits of the said business for that year, then and so often as the same shall happen he shall forthwith repay the excess to the said partnership concern: Provided also that neither of them the said C. D., E. F., and G. H. shall, so long as any part of the sum of £—— hereby agreed to be brought in by him shall remain unpaid, be entitled to draw out under this present clause more than the sum of £—— a year.

Power to  
partners to  
draw out  
monthly  
sums for  
personal  
expenses.

XXV. WITHIN the space of six calendar months after the expiration of the said term of fourteen years hereby appointed for the continuance of the said partnership, a general account shall be taken of all the stock in trade, credits, property and effects, debts and liabilities of the said partnership, and as soon as conveniently can be after such account shall have been made and taken, the outstanding debts owing to the said partnership shall be collected and got in with all convenient speed by some or one of the said partners, or some receiver or agent to be employed by the said partners for that purpose, and the plant, machinery, implements, utensils, stock in trade, and other effects

General  
account and  
division at  
expiration  
of partner-  
ship term.

BETWEEN  
FOUR  
PERSONS

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belonging to the said partnership, and capable of sale, shall be sold, either by public auction or private contract, with liberty to any of the said partners to become bidders and purchasers thereof, and the moneys which shall arise by the means aforesaid and all other the moneys of the said partnership shall be applied in manner following (that is to say), 1st. In payment of the costs and expenses of winding up and distributing the partnership estate under this present article; 2ndly. In payment and satisfaction of the debts and liabilities of the said partnership; 3rdly. In the repayment to each partner of the amount of capital brought by him into the said partnership concern, with such interest as may be due thereon; and lastly the surplus of the said moneys shall be divided between the said partners in equal shares.

Power to  
any  
partner to  
determine  
partnership  
at end of  
five, eight,  
or eleven  
years, by  
giving  
notice.

XXVI. IN case any one or more of the partners shall desire to determine the said partnership at the expiration of the first five, eight, or eleven years of the said term of fourteen years, and of such of his or their desire, shall give six calendar months' notice in writing to the others or other of them, or leave such notice at or upon the premises where the partnership business shall for the time being be carried on, then and in such case the said partnership shall cease and determine according to such notice, and in that case either the like final account and division shall be taken and made between the partners as is hereinbefore directed to be taken and made at the expiration of the said partnership by effluxion of time, or at the option of the remaining partner or partners not giving or leaving such notice as aforesaid, the like account and valuation shall be taken and made between the said partners of the then stock in trade, credits, property and effects of the said partnership as is hereinbefore directed to be annually made on and up to the — day of — in every year, and the said remaining partners or partner shall be at liberty to become and be the purchasers or purchaser of the entirety of the then stock in trade, credits, property, and effects of the said partnership, at the valuation thereof to be made and contained in such last-mentioned account on the execution by them or him of their or his joint and several bond to the retiring partner, or to each of the retiring partners (if more than one), for securing the payment to him, his executors, administrators, or assigns, of the amount of his share in such purchase or valuation moneys by four equal instal-

BETWEEN  
FOUR  
PERSONS.

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ments, to become and be successively due and payable at the expiration of six, twelve, eighteen, and twenty-four calendar months from such determination of the said partnership, with interest after the rate of £5 per cent. per annum to be computed from the same time, upon or in respect of the same share, or the instalments thereof for the time being remaining unpaid, and also for indemnifying him and them from the debts and liabilities of the said partnership.

XXVII. If any partner shall die before the — day of — next, then and in every such case the executors or administrators of the partner so dying shall be entitled to the amount of capital brought by such partner into the said business, with interest thereon, after the rate of £5 per cent. per annum, computed from the day of the date of these presents up to the day of his decease, and shall also be entitled to a further sum of £—— for every month, and so in proportion for any less period than a month which shall have elapsed from the day of the date of these presents up to the day of the decease of such partner, in lieu and satisfaction of the share of such deceased partner, in the profits of the said business for that period. If any partner shall die on the — day of — next, or on any subsequent — day of —, then and in every such case the executors or administrators of the partner so dying shall be entitled to the net amount or value of his share in the stock in trade, credits, property, and effects of the said partnership, as the same shall be ascertained by the annual account to be made on the day of his decease under Article 22. If any partner shall die on any day during the continuance of the said partnership later than the said — day of — next, and not being any subsequent — day of —, then and in every such case the executors or administrators of the partner so dying shall be entitled to the net amount or value of the share of such deceased partner in the stock in trade, credits, property, and effects of the said partnership, as the same shall have been ascertained by the annual account taken on the — day of — immediately preceding his decease under Article 22, and shall also be entitled to the further sum of £—— for every month, and so in proportion for any less period than a month which shall have elapsed between the same — day of — and the day of the decease of such partner, in lieu and full satisfaction of his share in the profits of the said business for that period. The interest and

On death  
of any  
partner his  
representa-  
tives to be  
entitled to  
his share of  
capital and  
to further  
sum in  
lieu of  
profits.

BETWEEN  
FOUR  
PERSONS.

The share  
of the  
deceased  
partner to  
be paid by  
instalments  
and secured  
by the bond  
of the  
surviving  
partners.

sum of money in lieu of profits, to which the executors or administrators of a deceased partner shall become entitled as aforesaid, shall be paid to them by the surviving partners or partner on demand, subject, however, to the deduction therefrom of any moneys which may have been drawn out by such deceased partner under Article 24. The principal sum of money to which the executors or administrators of a deceased partner shall become entitled as aforesaid, shall be paid to them by the surviving partners or partner by four equal instalments at the expiration of six, twelve, eighteen, and twenty-four calendar months after such death, with interest after the rate of £5 per cent. per annum, computed from such death, upon or in respect of the said principal sum, or the instalments thereof for the time being remaining unpaid, and shall be secured with such interest by the joint and several bond of the surviving partners or partner for the time being. The surviving partners or partner for the time being shall also give and execute a bond in a sufficient penalty, unto the executors or administrators of every such deceased partner for indemnifying them and the estate and effects of every such deceased partner against the debts and liabilities of the said partnership. The executors or administrators of every or any such deceased partner as aforesaid shall accept the moneys payable to them under this present article in full satisfaction of the share of such deceased partner in the stock in trade, credits, property, and effects of the said partnership and in the profits of the said business as aforesaid, and shall, upon the request and at the cost of the surviving partners or partner, do and execute all such acts, deeds, and things as may be necessary or proper for vesting such share in the surviving partners or partner, and for enabling them or him to collect and get in all the credits and effects due and owing to the said partnership.

Power to  
expel a  
partner in  
certain  
events.

XXVIII. If any of the said partners shall at any time during the continuance of the said partnership become a lunatic, or otherwise incapable of assisting in the management of the said business (unless such incapacity shall arise from any personal accident incurred in connection with the said business), or shall become a bankrupt, or make any composition with his creditors, or allow his affairs to be liquidated by arrangement under the provisions of the bankrupt laws, or shall make, draw, accept, indorse, or negotiate any promissory note or bill of ex-

BETWEEN  
FOUR  
PERSONS.

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change, or give any security in the partnership name except upon the account of the business thereof, and conformably to the true intent and meaning of these presents, or do or wilfully suffer to be done, any act or thing whereby the partnership property and effects or any of them, shall be seized, or taken in execution, or shall refuse or neglect to account to the other partners for any sum of money received by him in the partnership business, or shall wilfully conceal from the others of them any sum of money for the space of thirty days after he shall have received the same [or shall fail to observe or perform any of the articles or stipulations herein mentioned, and which are on his part to be performed,] then and in any of the said cases it shall be lawful for the other partners or partner, at any time within three calendar months next after the discovery of such lunacy, incapacity, offence, or default, to dissolve and determine the said partnership so far as respects the partner so becoming lunatic, incapable, or bankrupt, or so offending or making default as aforesaid, and expel him from the said joint concern by giving him notice in writing in that behalf, or leaving the same at or upon some part of the premises where the business shall for the time be carried on, and immediately after such notice shall be given or left as aforesaid, the said partnership shall cease and determine so far only as concerns such expelled partner, and thereupon his share and interest in the capital, and property of the said partnership shall belong to, and the business shall be henceforth carried on by the remaining partners or partner, and such sum or sums of money shall be paid to the expelled partner as would have been payable to his executors or administrators under Article 27 if he had died upon the day on which such notice shall be given or left as aforesaid, and shall be paid by instalments, and secured with interest by the bond of the remaining partners or partner in the same manner in all respects as is hereinbefore provided in case of the death of a partner as aforesaid.

XXIX. If during the continuance of the said partnership, or after the determination thereof, any difference shall arise between the said partners, or any of them, or their respective executors or administrators or any of them, in regard, &c. (*Arbitration clause*, see *supra*, p. 628).

IN WITNESS, &c.



## No. IV.

BETWEEN  
SOLICITORS.DEED of COPARTNERSHIP *between* SOLICITORS.

Parties.

Recite  
agreement  
by one to  
take other  
into  
partnership.  
Witnessing  
part.Mutual  
covenants  
to become  
partners.Duration of  
partner-  
ship.Style of  
firm.Place of  
business.Certain  
fixtures,

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c., solicitor (*one partner*), of the one part, and C. D. of, &c., solicitor (*other partner*), of the other part: WHEREAS the said A. B. has for many years carried on the business of a solicitor at — aforesaid, and he has agreed to take the said C. D. into partnership on the terms and conditions hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D. do hereby mutually covenant and agree to become and be partners in the profession or business of solicitors upon and subject to the terms, conditions, and stipulations expressed in the following articles (that is to say),—

I. THE said partnership shall continue for the term of — years, computed from the — day of —: PROVIDED NEVERTHELESS, that if the said A. B. shall be desirous of determining the said partnership, and of such his desire shall give — calendar months' notice in writing to the said C. D., or leave such notice at the office at which the business of the partnership shall for the time being be carried on, then at the expiration of such notice the said partnership shall cease and determine.

II. THE firm and style of the said partnership shall be "B. and D."

III. THE business of the said partnership shall be carried on at the present offices of the said A. B. (which are his private property), and the firm shall, during the said partnership, be tenants of the said offices at the yearly rent of £—, without any deduction for rates, taxes, or other impositions whatsoever (except the landlord's property-tax), to be paid by equal half-yearly instalments on the — day of — and the — day of — in every year, the first of such payments to be made on the — day of —. All external repairs and painting shall be done by and at the expense of the said A. B., and all internal repairs and painting shall be done by and at the expense of the firm.

IV. ALL the books, fixtures, and things now being in or about

or belonging to the said offices are the property of the said A. B., and shall remain his exclusive property during the said partnership.

BETWEEN  
SOLICITORS.

&c., to  
remain  
property of  
senior  
partner.

V. THE partners shall be interested in the profits of the said business in the shares following (that is to say), the said A. B. shall be entitled to three-fourths of the said profits, and the said C. D. shall be entitled to one fourth part thereof.

Profits,  
how to be  
divided.

VI. THE capital (if any) from time to time required for carrying on the said business shall be made up by the said A. B. and C. D. in the same proportions as they are entitled to the profits of the said business as aforesaid, and if either partner shall at any time advance more than his due proportion of capital, the excess shall be considered as a loan from him to the firm, and shall be repaid on demand, and until repayment shall bear interest after the rate of £5 per cent. per annum.

Capital

VII. THE said A. B. shall be at liberty to draw out of the funds of the partnership, for his personal expenses, the monthly sum of £—, and the said C. D. shall be at liberty to draw out of the said funds, for his personal expenses, the monthly sum of £—, and the sum to be so drawn out shall be in part or full satisfaction (as the case may be) of the shares of the said A. B. and C. D. respectively in the profits of the said business for that year: PROVIDED ALWAYS, that if in any year the sums drawn out as aforesaid by either partner shall exceed the amount of his share of the net profits for that year, such partner shall refund the excess as soon as the same shall be ascertained at the taking of the yearly account hereinafter mentioned.

Power to  
partners to  
draw out  
monthly  
sums.

VIII. ALL the expenses of and incidental to the carrying on of the said business, and all losses which may be incurred on account thereof, shall be paid and borne out of the profits of the said business, or in case the same shall be deficient, then shall be paid by the said partners in the proportions following (that is to say), three-fourths thereof shall be paid by the said A. B., and the remaining one fourth part thereof by the said C. D.

Losses to be  
borne by  
partners in  
proportion  
to their  
share of  
profits.

IX. THE said partners shall keep proper books of account, and enter therein the particulars of all business done and of all receipts and disbursements, and all such other matters and things as ought to be entered in the said books in the usual and regular course of business of a solicitor, and the said books shall be kept in the offices of the firm, and be open at all convenient times to the inspection of both partners.

Books of  
account.

BETWEEN  
SOLICITORS.

Junior  
partner to  
give his  
whole time  
to business.

Senior  
partner  
not to be  
obliged to  
attend to  
business.

Partners to  
be faithful  
to each  
other.

Annual  
accounts  
to be taken.

X. THE said C. D. shall devote the whole of his time to the said business, and diligently employ himself therein and promote to the utmost of his power the benefit and advantage of the said partnership.

XI. THE said A. B. shall not be obliged to attend to the said business, any further than he shall think proper, and may either actively engage in the said business or abstain wholly or partially from any active part therein, as he shall from time to time think proper.

XII. EACH of the partners shall be faithful to the other, and neither of them shall, without the previous consent in writing of the other of them, employ any of the moneys or effects of the said partnership, or engage the credit thereof in any matter or thing, except upon the account and for the benefit of the said partnership, and neither of them shall, without the previous consent in writing of the other of them, enter into any bond, or become otherwise bound as bail or surety for any person or persons whomsoever, or do or suffer any act or thing whereby the other of the said partners or the moneys or effects of the said partnership shall or may be charged, attached, or affected. And each of them shall pay his separate debts, and at all times indemnify the other of them and the moneys and effects of the said partnership from the said debts and from all actions, claims, and demands for or on account of the same.

XIII. On the — day of — in every year an account in writing shall be taken of the moneys, credits, and effects, debts and liabilities of the said partnership, which annual account shall be written in two books, to be respectively signed by the said partners, and after such signing each of the said partners shall take one of the said books into his custody, and shall be concluded by the said account, unless some error shall appear therein, and shall be notified within three calendar months after the taking of such account, and then the said account shall be opened so far only as to rectify such error, and after the making up of every such annual account, all interest (if any) which shall be due to either partner for any money which may have been lent by him to the said firm, shall, in the first place, be taken by such partner, and afterwards the said partners shall divide between them in the proportions aforesaid the net profits of the said business which have accrued or been gained during the then preceding year.

XIV. IN case the partnership shall determine during the joint lives of the said partners, a general statement and account shall within six calendar months after such determination be made and taken of the partnership affairs and transactions, and of the moneys, credits, and effects, debts and liabilities of the said firm, and the said moneys, credits, and effects shall be applied in manner following (that is to say), first, in payment of the debts and liabilities of the said firm; secondly, in repaying to each partner the capital brought by him into the said business, with all interest due thereon, and the surplus of the said moneys, credits, and effects shall be divided between the said partners in such manner that the said A. B. shall receive three fourth parts thereof, and the said C. D. shall receive the remaining one fourth part thereof.

BETWEEN  
SOLICITORS.

Final account and division at end of partnership.

XV. IN case either of the said partners shall die during the continuance of the said partnership, the like statement, account, and division shall be made and taken between the surviving partners, and the executors or administrators of the deceased partner, as are by Article 14 directed to be made and taken respectively between the partners on the determination of the said partnership during their joint lives: PROVIDED ALWAYS, that the surviving partner shall be at liberty to purchase the printed books, office fixtures, and furniture (if any) which shall belong to the firm at a valuation, such valuation to be made by two indifferent persons or their umpire, to be appointed respectively as is hereinafter provided in the case of arbitrators or their umpire upon a reference to arbitration, and the amount of such valuation shall form part of the partnership funds, and be divided accordingly: PROVIDED ALSO, that all deeds, drafts of deeds, and other papers belonging to clients or otherwise which shall be in the custody of the said partners, or either of them, on account of the firm, shall (subject to the claims of the persons to whom the same shall belong) remain in the hands of or be delivered to the surviving partner.

Final account and division on death of a partner.

XVI. THE said A. B. shall be at liberty at any time during the said term to give the whole or any part of his share in the said business, and the profits thereof, to any son of him the said A. B. who may become a duly qualified solicitor, and to introduce such son into the said partnership business to the extent of the share to be so given to him as aforesaid, and in such case the said introduced partner shall thenceforth during

Power to senior partner to introduce his son into the business.

BETWEEN  
SOLICITORS.

the residue of the said term of — years carry on the said business in partnership with the said A. B. and C. D., or the said C. D., as the case may be, for the then residue of the said term, upon and subject to the like terms, conditions, and stipulations as are herein contained with regard to the said intended partnership between the said A. B. and C. D., or as near thereto as the circumstances will permit, save and except that the said introduced partner shall be bound to devote the whole of his time to the said business, and diligently employ himself therein, and shall not have the power which is hereinbefore given to the said A. B. of determining the said partnership by notice.

XVII. (*Arbitration clause, supra*, p. 628.)

IN WITNESS, &c.

## No. V.

BETWEEN  
SURGEONS  
AND APO-  
THECARIES.

### DEED of COPARTNERSHIP between SURGEONS and APOTHECARIES.

Parties.

Recite  
agreement  
by one to  
admit other  
into part-  
nership.

Witnessing  
part.

Mutual  
covenants  
to become  
partners.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c., surgeon and apothecary (*one partner*), of the one part, and C. D. of, &c., surgeon and apothecary (*other partner*), of the other part: WHEREAS the said A. B. has for some years past carried on the business of a surgeon and apothecary in the said city of —, and he now holds the appointment of surgeon to the — regiment of militia: AND WHEREAS the said C. D. has recently been appointed assistant-surgeon to the same — regiment: AND WHEREAS the said A. B. has agreed to admit the said C. D. into partnership, in consideration of the payment by him the said C. D. to the said A. B. of the sum of £— by way of premium, and also the sum of £—, being one third part of the present value of the horses, gig, harness, surgical instruments, drugs, bottles, and other effects of the said A. B., provided by him for the purposes of his said business, and upon the terms and according to the provisions hereinafter expressed, and the said C. D. has accordingly paid to the said A. B. the said sum of £— before the execution of these presents, as the said A. B. doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that the said A. B. and C. D. do hereby mutually covenant and agree to become and be partners in the business of surgeons and apothecaries upon and subject to the

terms, conditions, and stipulations expressed in the following Articles (that is to say):—

BETWEEN  
SURGEONS  
AND APO-  
THECARIES.

I. THE said partnership shall continue during the joint lives of the said A. B. and C. D., unless previously determined under the provisions in that behalf hereinafter contained.

Duration of  
partnership.

II. THE firm of the partnership shall be "B. and D."

Style of  
firm.

III. THE business of the said partnership shall be carried on at the surgery in — street, now occupied by the said A. B., or at such other surgery as shall from time to time be agreed upon by the said partners.

Place of  
business.

IV. THE horses, gig, harness, surgical instruments, drugs, bottles, and other effects provided by the said A. B. for the purposes of his business (one third part of the value whereof has been so paid by the said C. D. as aforesaid), shall become the joint property of the said partnership.

Horses, &c.  
to become  
joint pro-  
perty.

V. THE said A. B. shall receive to his own use the whole of the salary, remunerations, or other profits arising from his said appointment as surgeon, and the said C. D. shall receive to his own use the whole of the salary, remunerations, or other profits arising from his said appointment as assistant-surgeon to the said — regiment of militia during such time as the same shall be embodied, and after the same shall be disembodied during the periods of their being called out for training and exercise.

Each part-  
ner to re-  
ceive profits  
of his ap-  
pointment  
to his ex-  
clusive use  
for certain  
periods.

VI. SUBJECT to the provision contained in Article 5, the said partners shall be interested in the net profits of the partnership business in the shares following (that is to say), the said A. B. shall be entitled to two third parts thereof, and the said C. D. shall be entitled to one third part thereof.

Division of  
profits

VII. THE salaries, remunerations, and other profits to arise from the said respective appointments of the said partners as surgeon and assistant-surgeon to the said — militia, after the disembodiment of the same, except during the periods of their being called out for training and exercise, and the salaries and remunerations and other profits to arise from any appointments which may hereafter be accepted by the said partners, or either of them, and all premiums with apprentices, and all pecuniary presents and gratuities from patients, and all other professional emoluments whatsoever, whether ordinary or extraordinary, which may be received from time to time by the said partners, or either of them (except as provided by Article 5) shall be

What to be  
considered  
profits.

BETWEEN  
SURGEONS  
AND APO-  
THECARIES.

Losses, how  
to be borne.

treated as profits of the said partnership business, and be accounted for accordingly.

VIII. THE rent, and also the rates and taxes of the surgery at which the said business shall for the time being be carried on, and of the stables and buildings at which the said horses and gig now brought into partnership, or any other horses, gigs, or carriages which may hereafter be brought into partnership, shall for the time being be kept, and all expenses of repairs and insurance, and other outgoings relating thereto, and all expenses of keeping such horses, gigs, and carriages as aforesaid, and of providing surgical instruments, drugs, and other articles and effects required for the purposes of the partnership business, and all salaries and expenses of assistants, apprentices, messengers, and servants connected with the said business, and all other expenses and outgoings whatsoever in anywise relating to the said business, shall be paid out of the profits of the said business, or if the same shall be deficient, two third parts of such deficiency shall be paid by the said A. B., and the remaining one third part thereof shall be paid by the said C. D.

Proper ac-  
count books  
to be kept.

IX. PROPER books of account shall be kept by the said partners, and entries immediately made therein of all receipts and payments on behalf of the said partnership, and of all such other matters and things as are usually entered in similar books of account (including all receipts in respect of such salaries, remunerations, premiums with apprentices, pecuniary presents, gratuities from patients, and other moneys, as are hereinbefore provided to be treated as part of the profits of the said business): AND SUCH books of account shall be kept in some convenient part of the surgery where the said business shall for the time being be carried on, and each of the said partners shall have free access to inspect and examine the same, and take copies and extracts thereof and therefrom.

Both part-  
ners to  
attend to  
business.

X. BOTH the said partners shall employ themselves diligently in the business of the said partnership, and use their utmost endeavours to promote the interests thereof.

To be faith-  
ful to each  
other.

XI. THE said partners shall be just and faithful to one another, and shall furnish to each other when required full accounts in writing of all matters and transactions relating to the said partnership.

Quarterly  
accounts to  
be taken.

XII. ON the 1st day of January, the 1st day of April, the 1st day of July, and the 1st day of October in every year during

BETWEEN  
SURGEONS  
AND APO-  
THECARIES.

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the continuance of the said partnership (beginning with the 1st day of April next), a general account in writing shall be made and taken by the said partners of all the moneys, credits, property, and effects, debts, and liabilities of the said partnership, and such account shall be entered in two books, and signed in each book by each of the said partners, and after such signature each of the said partners shall take one of the said books, and they shall both be bound by every account so signed, except that if any manifest error be found, then within three calendar months after such signature thereof as aforesaid such error shall be rectified. After each such general account shall be signed as aforesaid, the net profits of the said partnership business appearing thereby, after providing for all such outgoings and expenses as aforesaid, shall be divided between the said partners in the proportions hereinbefore mentioned in that behalf.

XIII. EITHER of the said partners shall be at liberty at any time to withdraw from the said partnership by giving to the other of them or leaving for him at the surgery at which the said business shall for the time being be carried on, six calendar months' notice in writing of his intention in that behalf, and at the expiration of such notice the said partnership shall be determined, and the whole of the business thereof shall thenceforth belong to the partner to or for whom such notice shall be given or left as aforesaid: PROVIDED ALWAYS, that the partner so withdrawing from the said business as aforesaid shall not at any time during his life practise as a surgeon or apothecary within a distance of ten miles from —, and if he shall so practise, shall pay to the other partner, his executors or administrators, the sum of £—— for every month during which or any part of which he shall so practise, by way of liquidated damages.

Power to  
either part-  
ner to deter-  
mine the  
partnership  
by notice.

XIV. IF either of the said partners shall at any time during the continuance of the said partnership become bankrupt, or make a composition with his creditors, or allow his affairs to be liquidated by arrangement under the provisions of the bankrupt laws, or shall commit any breach of any of the articles herein contained on his part to be observed and performed, and the other of the said partners shall at any time within fourteen days after knowledge or notice of any such case having happened, give notice in writing of his desire that the said partnership shall cease, or leave such notice at the surgery at which the

If either  
partner  
becomes  
bankrupt  
or breaks  
articles,  
other part-  
ner may  
determine  
the partner-  
ship by  
notice.



BETWEEN  
SURGEONS  
AND APO-  
THECARIES.

business of the partnership shall for the time being be carried on, then immediately upon such notice being so given or left the said partnership shall cease and determine, and the whole of the business thereof shall thenceforth belong to the partner giving or leaving such notice as aforesaid: PROVIDED NEVERTHELESS, that any dissolution of the said partnership under this present clause shall not prejudice any remedies of the continuing partner for the breach of any of the articles herein contained.

Final ac-  
count and  
division on  
termination  
of partner-  
ship.

XV. UPON the determination of the said partnership by any means whatsoever, a general and final account in writing shall be made and taken of all the moneys, credits, property, effects, debts, and liabilities of the said partnership up to the time of the determination thereof, and the said moneys, credits, property, and effects shall, after discharging or providing for the debts and liabilities of the said partnership, be forthwith divided between the said partners or their respective executors or administrators, in the proportion in which they are hereinbefore declared to be entitled to the net profits of the said business, and the executors or administrators of a deceased partner shall have full power to concur in such division, and to bind the persons beneficially interested in his estate thereby: PROVIDED ALWAYS, that upon any such determination as aforesaid, the surviving or continuing partner shall be at liberty to take at a valuation the moiety of the deceased or outgoing partner in the stock in trade and effects of the said partnership, such valuation to be made by two competent persons or their umpire, to be appointed respectively as is hereinafter provided in the case of arbitrators and their umpire upon a reference to arbitration, and the amount of such valuation shall be paid by the surviving or continuing partner, to the executors or administrators of the deceased partner, or to the outgoing partner (as the case may be), within twelve calendar months from the determination of the said partnership, and shall be secured in the meantime, with interest thereon at the rate of £5 per cent. per annum, by the joint and several bond in a sufficient penalty of the surviving or continuing partner, and a surety to be approved by the executors or administrators of the deceased partner, or by the outgoing partner (as the case may be).

If partner  
ship be  
determined  
by death or  
voluntary  
withdrawal

XVI. IN case the said partnership shall be determined by the death or voluntary withdrawal of either partner within ten years from the day of the date of these presents, the surviving or con-

tinuing partner shall pay to the executors or administrators of the deceased partner, or to the outgoing partner (as the case may be), the sum of £—, by way of purchase-money for the share of such deceased or outgoing partner in the goodwill of the said business, the same to be paid within twelve calendar months after the determination of the said partnership, and to be secured in the meantime, with interest after the rate aforesaid, by such joint and several bond as aforesaid.

BETWEEN  
SURGEONS  
AND APO-  
THECARIES.

continuing  
partner to  
pay for  
goodwill.

XVII. (*Arbitration clause*, see *supra*, p. 628).

IN WITNESS, &c.

## No. VI.

ADMISSION of the SON of one of two PARTNERS to a PARTICULAR PART of his FATHER'S SHARE in the BUSINESS, pursuant to a power contained in the ARTICLES of COPARTNERSHIP.

ADMISSION  
OF THE  
SON OF ONE  
OF TWO  
PARTNERS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. (*one of the partners*), of the first part, C. D. of, &c. (*the other partner*), of the second part, and E. B. of, &c. (*son of A. B.*), of the third part: WHEREAS by an indenture dated the — day of —, and made between the said A. B. of the one part, and the said C. D. of the other part, each of them the said A. B. and C. D. covenanted with the other of them, his executors and administrators, to be partners in the business of —, for the term of seven years, to be computed from the — day of — then last, upon and subject to the conditions and provisions therein contained, and by the indenture now in recital it was (amongst other things) provided that it should be lawful for the said A. B., at any time or times while engaged in the said partnership, to introduce his son, the said E. B., into the said business as an acting partner, and to assign or otherwise make over to him the whole or any part of the share of the said A. B. in the stock, moneys, and effects of the said partnership, and the profits of the said business, and that in such case the said E. B. should become a partner in the said business as to the part or parts to be assigned to him as aforesaid for the residue of the said term of seven years, upon and subject to the conditions and provisions contained in the said indenture, or as near thereto as

Parties.

Recite  
articles of  
partnership.

Covenant in  
articles en-  
abling one  
of the part-  
ners to  
admit his  
son to be a  
partner as  
to whole or  
a portion of  
his share.

ADMISSION  
OF THE  
SON OF ONE  
OF TWO  
PARTNERS.

Desire to  
admit son.

Witnessing  
part.

Admission  
of son to  
part of the  
share of the  
father.

Second  
witnessing  
part.

circumstances would permit, and should enter into a covenant with the said A. B. and C. D., or with the said C. D. alone as the case might require, to observe and perform the said conditions and provisions so far as the same ought to be observed and performed by him the said E. B.: AND WHEREAS the said A. B. is desirous of introducing his son the said E. B. into the said business as an acting partner, and to give, assign, and make over to him the said E. B. one moiety of the share of him the said A. B. in the stock in trade, moneys, credits, and effects of the said partnership, and the profits of the said business: NOW THIS INDENTURE WITNESSETH, that in order to effectuate his said desire, and in pursuance of the power for this purpose given to him by the said recited indenture as aforesaid, the said A. B. doth hereby introduce the said E. B. into the said partnership business as an acting partner, and doth hereby assign unto the said E. B., his executors, administrators, and assigns, one moiety of the share of him the said A. B. in the stock in trade, moneys, credits, and effects of the said partnership, and in the profits to arise from the said partnership business, To HOLD the same unto the said E. B., his executors, administrators, and assigns absolutely: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises the said E. B. doth hereby for himself, his heirs, executors, and administrators, covenant with each of them the said A. B. and C. D., his executors and administrators, that he the said E. B. shall and will henceforth, and during the remainder of the said partnership term of seven years, remain and be a partner with the said A. B. and C. D. in the said business, and shall and will observe and perform the conditions and provisions contained in the said recited indenture of the — day of —, so far as the same ought henceforth to be observed and performed by him the said E. B. in respect of the moiety hereby assigned to him of the share of the said A. B. in the said business in the same manner in all respects as the said A. B. would have been bound to observe and perform the same if these presents had not been made,

IN WITNESS, &c.

## No. VII.

DEED of DISSOLUTION of PARTNERSHIP *where one of the PARTNERS retires, and the two others continue the BUSINESS; ASSIGNMENT of the RETIRING PARTNER'S interest in the GOODWILL and STOCK-IN-TRADE and EFFECTS, and COVENANT by him NOT TO CARRY ON similar BUSINESS (a).*

DISSOLUTION  
OF PART-  
NERSHIP.

THIS INDENTURE, made the — day of —, BETWEEN Parties.  
A. B. of, &c. (*retiring partner*), of the first part, C. D. of, &c. (*one of the continuing partners*), of the second part, and E. F. of, &c. (*other continuing partner*), of the third part: WHEREAS Recito existing partnership deed.  
by an indenture dated the — day of —, and made, &c., the said A. B., C. D., and E. F. agreed to carry on the business of —, in partnership in equal shares for the term of — years, subject to the covenants and provisions contained in the said indenture, and they have carried on the said business accordingly up to the day of the date of these presents: AND  
WHEREAS a statement and account of the stock in trade, moneys, credits, and effects, debts and liabilities of the said partnership have been this day made out, signed and settled between the said A. B., C. D., and E. F., and the share of the said A. B. in the said stock in trade, moneys, credits, and effects, after providing for the said debts and liabilities, has been valued at That an account has been settled between partners.

(a) The question of stamp duty on a deed to carry into effect an arrangement for the retirement of a partner where he is paid the net value of his share in the assets after allowing for the liabilities is often found an embarrassing one. As to the stamp duty payable on deeds of dissolution of partnership.

It seems from recent cases (*Potter v. Commissioners of Inland Revenue*, 23 L. J. Ex. 345; *Christie v. Same*, L. R. 2 Ex. 46; *Phillips v. Same*, ib. 399), that such a transaction is a sale, and consequently if any deed or instrument is executed in order to vest the property in the continuing partners, such an instrument requires an *ad valorem* stamp duty of 10s. per cent. as on a sale. So far as regards houses or land, goodwill, tenants, fixtures or other property which can only be transferred by deed or a written instrument the duty cannot be avoided. But where the whole of the assets consists of goods and chattels and book debts, and nothing is paid for the goodwill, an actual assignment by deed seems unnecessary. The chattels pass by delivery, and the book debts can be received by the continuing partners without any power of attorney.

In the above Precedent there is an actual assignment which will require an *ad valorem* duty. See the following Precedents, in which the duty is either wholly or partially avoided.

DISSOLUTION  
OF PART-  
NERSHIP.

Agreement  
that one  
partner  
shall retire  
upon certain  
terms.

Bond by  
remaining  
partners to  
retiring  
partner.

Witnessing  
part.

Parties dis-  
solve part-  
nership as  
to retiring  
partner, and  
others agree  
to remain  
partners.

£——, and the share and interest of the said A. B. in the good-  
will of the said business has been valued at the further sum of  
£——, making with the said sum of £—— the sum of £—— :  
AND WHEREAS it has been agreed between the parties hereto  
that the said A. B. shall retire from the said business, and  
shall accept the sum of £—— in full satisfaction of his share  
and interest therein and the goodwill thereof and all the stock-  
in-trade, credits, and effects belonging thereto : AND it has been  
also agreed that the said sum of £—— shall be paid by four  
equal instalments, at the expiration of six, twelve, eighteen, and  
twenty-four calendar months respectively, computed from the  
date of these presents, with interest on the same sum or the instal-  
ments thereof for the time being remaining unpaid after the rate  
of £5 per cent. per annum computed from the date of these  
presents, and that the said C. D. and E. F. shall give and execute to  
the said A. B. their joint and several bond for securing the pay-  
ment of the said sum of £—— by such instalments and with such  
interest as aforesaid, and also for indemnifying him against  
the debts and liabilities of the said partnership : AND WHEREAS  
in part pursuance of the said agreement the said C. D. and  
E. F. have given and executed to the said A. B. their joint and  
several bond (α), bearing even date with these presents in the  
penal sum of £——, subject to a condition thereunder written  
for making the same void, upon payment by the said C. D.  
and E. F., or one of them, their or one of their heirs,  
executors, or administrators, unto the said A. B., his exe-  
cutors, administrators, or assigns, of the sum of £—— by  
such instalments, and with such interest as aforesaid, and  
upon the said C. D. and E. F., their heirs, executors, and ad-  
ministrators, indemnifying the said A. B., his executors and  
administrators, estates and effects, from and against the debts  
and liabilities of the said partnership and all claims and de-  
mands in respect thereof : NOW THIS INDENTURE WIT-  
NESSETH, that in further pursuance of the said agreement in  
this behalf the said A. B., C. D., and E. F. do hereby dissolve  
the said partnership hitherto existing between them so far as  
regards the said A. B., and do hereby mutually covenant that  
they the said C. D. and E. F. will henceforth be and remain  
partners in the said business in equal shares for the residue of

(α) This bond will require a 10s. stamp only. See 33 & 34 Vict. c. 97,  
sec. 72, sub-sec. 4.

the said term of — years upon and subject to the conditions and provisions contained in the said indenture dated the — day of —, or as near thereto as the circumstances will permit : DISSOLUTION OF PARTNERSHIP.

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement in this behalf, and in consideration of the premises, the said A. B. doth hereby assign and release unto the said C. D. and E. F., their executors, administrators, and assigns, ALL the share and interest of him the said A. B. in the said business and the goodwill thereof and the stock in trade, moneys, credits, and effects belonging thereto, To HOLD the same unto the said C. D. and E. F., their executors, administrators, and assigns absolutely in equal shares : Second witnessing part.

AND THE SAID A. B., so far as regards his share hereby assigned or expressed so to be, doth hereby appoint the said C. D. and E. F., and each of them, to be the true and lawful attorneys and attorney of him the said A. B. to ask, demand, sue for, recover, and receive of and from all persons liable to pay or deliver the same, all the debts, sums of money, and effects due and owing and belonging to the said partnership hereby dissolved, or expressed so to be, and on payment or delivery thereof to give and execute receipts, releases, and discharges for the same respectively, and on non-payment or non-delivery thereof, or any part thereof, to institute any actions or other proceedings whatsoever for recovering and compelling payment thereof, and for the purposes aforesaid, or any of them, to use the name of the said A. B., and to do and perform all acts and things in relation to the premises as fully and effectually as he the said A. B. might or could have done the same in his own proper person if these presents had not been executed : Retiring partner assigns his share to other partners.

AND THE SAID A. B. doth hereby covenant with the said C. D. and E. F., that he the said A. B. will not during his life carry on the business of — in the town of — or within — miles therefrom : Power of attorney.

AND THIS INDENTURE LASTLY WITNESSETH that in consideration of the premises, the said A. B. doth hereby release the said C. D. and E. F. and each of them, and the said C. D. and E. F. do hereby release the said A. B. of and from all covenants and provisions contained in the said indenture of the — day of — (*Articles of Partnership*), and all actions, claims, and demands in relation to the said late partnership.

IN WITNESS, &c.

## No. VIII.

AGREEMENT  
FOR DIS-  
SOLUTION.

## AGREEMENT for DISSOLUTION of PARTNERSHIP (a).

Parties.

Agreement.

One partner  
to retire,  
and others  
to carry on  
business.

Continuing  
partners to  
pay to the  
retiring  
partner by  
instalments  
to be  
secured by  
bond.

Retiring  
partner  
may carry  
on same  
business if  
he thinks  
fit.

A proper  
deed to be  
executed.

THIS AGREEMENT, made the — day of — 18—, BETWEEN A. B. of, &c. (*retiring partner*), of the one part, and C. D., of, &c., and E. F. of, &c. (*continuing partners*), of the other part (*Recite partnership and that account has been settled and retiring partner's share ascertained, as in last Precedent, omitting all reference to the goodwill*): NOW IT IS HEREBY AGREED between the parties hereto as follows:—

1. THE said A. B. shall, as from the date of these presents, retire from the said business, and the said C. D. and E. F. shall henceforth carry on the same in partnership in equal shares without the said A. B.

2. THE said C. D. and E. F. shall pay to the said A. B. the sum of £— by four equal half-yearly instalments at the end of six, twelve, eighteen, and twenty-four calendar months respectively computed from the date of these presents, with interest on the same sum, or the instalments thereof for the time being remaining unpaid after the rate of £5 per cent. per annum computed from the date of these presents, and shall give and execute to him their joint and several bond for securing the payment of the said sum of £—, by such instalments and with such interest as aforesaid, and also for indemnifying him against the debts and liabilities of the said partnership: And the said A. B. shall accept the said sum of £— to be secured as aforesaid in full satisfaction of all his share and interest in the stock in trade, credits, and effects of the said partnership.

3. INASMUCH (b) as in estimating the sum to be paid as aforesaid, nothing was added in respect of the goodwill of the business, the said A. B. shall be at liberty to carry on the like or any other business wherever he may think fit.

4. BESIDES the said bond a proper deed shall be executed

(a) It is supposed in this case that the partnership property consists wholly of chattels and book debts, and that nothing is to be paid for the goodwill.

(b) This will be inserted, if so agreed.

between the parties hereto for the purpose of carrying into effect this agreement so far as a deed is necessary for that purpose.

AGREEMENT  
FOR DIS-  
SOLUTION.

AS WITNESS, &c.

No. IX.

DEED to carry into effect the above AGREEMENT (a).

DEED OF  
DISSOLU-  
TION.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*retiring partner*), of the one part, and C. D. and E. F. of, &c. (*continuing partners*), of the other part (*Recite partnership, and that an account has been settled and share ascertained, as in last Precedent*): AND WHEREAS by an agreement in writing, dated the — day of — last, it was agreed that (*Recite operative part of last Precedent fully*): AND WHEREAS in part pursuance of the said agreement the said C. D. and E. F. have, &c. (*recite bond, supra*, p. 654): AND WHEREAS all the stock in trade and effects of the said late partnership consisting of personal chattels have been delivered by the said A. B. to the said C. D. and E. F., and they have taken exclusive possession thereof: AND WHEREAS some of the book debts owing to the said late partnership have been received by the said C. D. and E. F., and the remainder have been carried to the account of the said C. D. and E. F. in the partnership books with the consent of the said A. B.: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, IT IS HEREBY DECLARED that the said partnership between the said A. B., C. D. and E. F. has been dissolved so far as regards the said A. B. as from the — day of — last: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. doth hereby release the said C. D. and E. F., and the said C. D. and E. F. do hereby release the said A. B. from all the covenants and provisions contained in the said indenture of the — day of — (*Articles of partnership*), and all actions, claims, and demands for or on account of the same: AND the said A. B. doth hereby covenant with the said C. D. and E. F., their executors and administrators, that he the said A. B. will at the request and cost of the

Parties.

Recite  
agreement  
for retire-  
ment.

Bond.

That stock  
in trade has  
been deliv-  
ered over  
to contin-  
ing part-  
ners.

That book  
debts have  
been carried  
to their  
account.

Witnessing  
part.

Declaration  
of dissolu-  
tion.

Mutual  
releases.

Covenant by  
retiring  
partner for  
further  
assurance.

(a) It is considered that this deed will require a common deed stamp only.



DEED OF  
DISSOLU-  
TION.

said C. D. and E. F., their executors or administrators, do and execute all such further acts, deeds, and things for effectually vesting in them all the property and assets of the said late partnership, and enabling them to receive the same as by them shall be reasonably required.

IN WITNESS, &c.

### No. X.

CONVEYANCE  
OF SHARE IN  
FREEHOLDS  
AND  
LEASEHOLDS  
TO SURVIV-  
ING  
PARTNER.

CONVEYANCE *and* ASSIGNMENT *by the* DEVISEE *and*  
EXECUTRIX *of a* DECEASED PARTNER *in a* BREWERY  
*business, of his* SHARE *of* FREEHOLD *and* LEASEHOLD  
HOUSES *forming part of the* PARTNERSHIP ASSETS  
*to the* SURVIVING PARTNER, *who* PURCHASES *under*  
*a* POWER *in the* PARTNERSHIP DEED (a).

Recitals.  
Conveyance  
and assign-  
ment of  
freehold and  
leasehold  
property to  
deceased  
partner  
and surviv-  
ing partner  
as tenants in  
common in  
equal  
shares.

Mortgage.

That  
deceased  
partner and  
surviving

THIS INDENTURE, made the — day of — 18—,  
BETWEEN A. B. of, &c. (*devisee and executrix of deceased partner*),  
of the one part, and C. D. of, &c. (*surviving partner*), of the  
other part: WHEREAS by an indenture dated, &c., and made,  
&c., the freehold messuages, lands, and hereditaments comprised  
in the first part of the schedule hereunder written, were con-  
veyed as to one undivided moiety thereof to the use of the said  
X. B. (*the deceased partner*), his heirs and assigns, and as to the  
other undivided moiety thereof, to the use of the said C. D., his  
heirs and assigns: AND by the same indenture the leasehold  
messuages, lands, and hereditaments comprised in the second  
part of the said schedule were assigned unto the said X. B. and  
C. D., their executors, administrators and assigns, for the residue  
then unexpired of the several terms of years for which the said  
premises were respectively holden, subject to the rents and  
covenants affecting the same respectively: AND WHEREAS by  
&c. (*Recite a mortgage by X. B. and C. D. of the said freehold  
and leasehold premises for £10,000*): AND WHEREAS the said  
X. B. and C. D., carried on the business of common brewers

(a) This is one of five deeds for conveying the share of the deceased partner in the freehold and leasehold property of the partnership. The remaining assets (except moveable chattels passing by delivery, and book debts) are transferred by separate deeds. The whole arrangement is recited in the next precedent.

and maltsters at —, in partnership, and were entitled to the property and assets of the said partnership in equal shares, subject to the debts and liabilities thereof: AND WHEREAS the messuages, lands and hereditaments comprised in the schedule hereunder written with other freehold and leasehold messuages, lands, and hereditaments, were part of the property and assets of the said partnership: AND WHEREAS the said X. B. duly made his will dated, &c., and thereby devised all his real and personal estate to his wife, the said A. B., and appointed her sole executrix of his said will: AND WHEREAS (*death of testator and probate of will*): AND WHEREAS the said principal sum of £10,000 (a), secured by the said indenture of mortgage, still remains due and owing: AND WHEREAS it has been agreed between the parties hereto that the said C. D. shall purchase the moiety late of the said X. B. deceased, of and in all the freehold and leasehold messuages, lands and hereditaments which constituted part of the partnership property at the time of the death of the said X. B., subject to the incumbrances affecting the same respectively, at or for the price or sum of £26,850 (b): AND WHEREAS it is intended that such of the premises agreed to be purchased as aforesaid as are not included in the conveyance and assignment intended to be made by these presents, shall be conveyed and assigned to the said C. D. by four separate indentures bearing even date with these presents: AND WHEREAS for the purposes of the Stamp Acts the said purchase-money of £26,850 has been apportioned between the several premises forming the subject of these presents, and of the said other indentures respectively, and the sum of £9000 (c) is the proportion which has been agreed upon to be paid for or in respect of the premises the subject of these presents: AND WHEREAS the said sum of £9000 has been duly paid or satisfied by the said C. D. to the said A. B. before the execution of these presents

CONVEYANCE  
OF SHARE IN  
FREEHOLDS  
AND  
LEASEHOLDS  
TO SURVIV-  
ING  
PARTNER.

partner  
carried on  
business as  
brewers.

That said  
freeholds  
and lease-  
holds (with  
others) were  
part of  
partnership  
assets.

Will of  
deceased  
partner.

That money  
remains due  
on mort-  
gage.

Agreement  
that surviv-  
ing partner  
shall pur-  
chase  
moiety of  
deceased  
partner.

Arrange-  
ment that  
other free-  
holds and  
leaseholds  
shall be  
conveyed by  
four sepa-  
rate deeds.

Apportion-  
ment of  
purchase  
money for  
purpose of  
Stamp Acts.

Payment or  
satisfaction  
of purchase  
money.

(a) The other freeholds and leaseholds are also subject to mortgages amounting with the £10,000 to £37,300.

(b) It will be seen from the recitals in the next precedent that this purchase money is arrived at thus:—

Gross value of freeholds and leaseholds ...	...	£91,000
Deduct mortgage debts ...	...	£37,300
		<hr/>
	2	53,700
		<hr/>
		£26,850

(c) The stamp duty will be on £9000+£5000 (half of the mortgage debt) = £14,000.

CONVEYANCE  
OF SHARE IN  
FREEHOLDS  
AND  
LEASEHOLDS  
TO SURVIV-  
ING  
PARTNER.

Witnessing  
part.

Devisee of  
deceased  
partner  
conveys  
moiety of  
freeholds

to surviv-  
ing partner  
in fee simple  
subject to  
mortgage.

Further  
witnessing  
part.

Executrix  
of deceased  
partner  
assigns  
moiety of  
leaseholds

as she the said A. B. doth hereby acknowledge: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the sum of £9000 paid or satisfied by the said C. D. to the said A. B. as hereinbefore is mentioned, SHE the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, ALL THAT the one undivided moiety or other the part or share late of the said X. B. deceased, of and in ALL and singular the messuages, lands, tenements, and hereditaments comprised in the first part of the schedule hereunder written and therein particularly described [and ALSO of and in all other (if any) freehold messuages, lands, tenements and hereditaments heretofore forming part of the property and assets of the partnership lately subsisting between the said X. B. and C. D., and not included in the several conveyances made by the several indentures bearing even date herewith hereinbefore mentioned or referred to (a)], AND ALSO of and in, &c. (*general words, and all the estate, &c.*), TO HAVE and TO HOLD the moiety and premises hereby granted or expressed so to be unto and to the use of the said C. D., his heirs and assigns, SUBJECT nevertheless to the hereinbefore recited indenture of mortgage, and the said principal sum of £10,000 due and owing thereon, and interest due and to become due for and in respect of the same as from the — day of —, 18—, the day of the decease of the said X. B.: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration hereinbefore expressed, THE said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL THAT the one undivided moiety, or other the part or share late of the said X. B. deceased, of and in ALL and singular the leasehold messuages, lands, and tenements comprised in the second part of the schedule hereunder written and therein particularly described [and also of and in all other (if any) leasehold messuages, lands, and tenements heretofore forming part of the property and assets of the partnership lately subsisting between the said X. B. and C. D., and not included in the assignments made by the several indentures bearing even date herewith hereinbefore mentioned or referred to (b)], or any of them: AND ALSO

(a) The words within brackets will be inserted in one only of the conveyances.

(b) The words within brackets will be inserted in one of the conveyances only.

of and in all, &c. (*general words, and all the estate, &c.*): TO HAVE AND TO HOLD the said moiety and premises hereby assigned or expressed so to be unto the said C. D., his executors, administrators and assigns, for all the residue now unexpired of the several terms of years for which the same are respectively holden, SUBJECT nevertheless to the rents, covenants and conditions affecting the same respectively, and subject also to the said indenture of mortgage, and the said principal sum of £10,000 due and owing thereon, and to the interest due and to become due in respect thereof as from the said — day of — 18— (*Covenants for title by A. B.*): AND the said C. D. doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., her heirs, executors, and administrators, that he the said C. D., his heirs, executors, administrators, and assigns will, as from the said — day of —, 18— (being the day of the decease of the said X. B.), pay the yearly rents and observe and perform the lessee's covenants and conditions respectively reserved and contained by and in the several leases under which the said leasehold premises, one moiety whereof is hereby assigned, are respectively held: AND ALSO will pay the said principal sum of £10,000 secured by the said indenture of mortgage as aforesaid, and all interest due and to become due in respect thereof, as from the said — day of —, 18—, and will at all times hereafter keep indemnified the said A. B., her heirs, executors, and administrators, and also the estate and effects of the said X. B., deceased, from and against the said rents, covenants, conditions, principal money and interest respectively, and all actions, claims, and demands in anywise relating thereto.

IN WITNESS, &c.

CONVEYANCE  
OF SHARE IN  
FREEHOLDS  
AND  
LEASEHOLDS  
TO SURVIV-  
ING  
PARTNER.

unto sur-  
viving  
partner  
subject to  
rents and  
covenants  
and to  
mortgage.  
Covenant by  
surviving  
partner to  
indemnify  
estate of  
deceased  
partner.  
against  
rents and  
covenants  
and mort-  
gage debt.

---

THE SCHEDULE REFERRED TO BY THE ABOVE WRITTEN  
INDENTURE.

## No. XI.

ASSIGNMENT  
OF SHARE IN  
REMAINING  
PARTNER-  
SHIP ASSETS  
TO SURVIV-  
ING  
PARTNER.

---

ASSIGNMENT (to accompany last *Precedent*) by  
EXECUTRIX of DECEASED PARTNER of a MOIETY of  
the GOODWILL, and of certain other PERSONAL  
ESTATE, being the remaining ASSETS of the PARTNER-  
SHIP (other than MOVEABLE CHATTELS passing by  
delivery and BOOK DEBTS) to the SURVIVING PARTNER;  
COVENANT for FURTHER ASSURANCE.

Parties.

Recitals.  
Partnership  
deed and  
will of  
deceased  
partner.

Notice by  
surviving  
partner to  
purchase  
share of  
deceased  
partner.

Award of  
valuers of  
£41,000.

Payment of  
one instal-  
ment of  
purchase  
money.

Bond to  
secure re-  
maining  
instalments.

THIS INDENTURE, made the —— day of ——, BETWEEN  
A. B. of, &c. (*executrix of deceased partner*), of the one part, and  
C. D. of, &c. (*surviving partner*), of the other part: WHEREAS,  
&c. (*Recite partnership deed between X. B. and C. D., including  
a provision enabling surviving partner to purchase the  
share of deceased partner at a valuation on giving notice, the  
purchase-money to be paid by eight half-yearly instalments, and  
to be secured by bond; Will of X. B., making his wife A. B.  
sole devisee and executrix; his death and probate of his will*):  
AND WHEREAS by a notice under the hand of the said C. D., dated  
the —— day of ——, 18—, and addressed to the said A. B. as such  
executrix as aforesaid, the said C. D. gave to the said A. B.  
notice that it was his intention to exercise the option given to  
him by the said indenture as aforesaid of purchasing the share  
of the said X. B. deceased, of and in the assets and property  
of the said partnership (*Recite appointment of valuers  
and their award fixing the purchase-money to be paid by C. D.  
at £41,000*): AND WHEREAS the sum of £5125, being the one  
eighth part of the said purchase-money, which became payable  
on the —— day of ——, being the expiration of the first half  
year after the death of the said X. B., has been duly paid by the  
said C. D. to the said A. B., as she doth hereby acknowledge:  
AND WHEREAS the said C. D. and G. H. of, &c. (as his surety)  
have made and executed to the said A. B. their joint and  
several bond bearing even date with these presents in the sum  
of £——, subject to a condition for making void the same on  
payment to the said A. B., her executors, administrators, or  
assigns of the sum of £35,875, being the remainder of the said  
purchase-money of £41,000, by seven half-yearly instalments

with interest thereon in the meantime after the rate of £5 per cent. per annum, and upon the said C. D. keeping indemnified the said A. B., and the estate and effects of the said X. B. deceased from and against all debts and liabilities of the said late partnership: AND WHEREAS for the purposes of the said award the messuage or brewery and dwelling-house in or upon which the said business has been carried on, and the brewhouses, warehouses, storehouses, granaries, malthouses, and other offices at ——— belonging to the said business, and the freehold and leasehold messuages or public houses and other messuages, lands, and hereditaments, forming part of the said partnership estate, and the coppers, vats, barrels, casks, waggons, carts, drays, implements, horses, plant, utensils, beer, ale, porter, malt, hops, and other stock in trade belonging to the said partnership business, and the book debts and other effects constituting the assets of the said partnership (other than cash), were valued by the said (*valuers*) at the sum of £166,968, making, with a sum of £590 cash belonging to the said firm, the sum of £167,350: AND WHEREAS in the said valuation the several items constituting the property of the said partnership were valued as follows: 1st, the freehold and leasehold messuages, lands, and hereditaments (including the trade and other fixtures attached thereto) were valued at the sum of £91,000, and such valuation was made without any deduction for the mortgages affecting the same; 2nd, the goodwill of the said business was valued at the sum of £10,000 pursuant to an arrangement in that behalf made between the partners during the life of the said X. B.; 3rdly, five shares in the ——— Gas Company standing in the name of the said X. B. alone, but which were part of the partnership property, were valued at £200; 4thly, the policies of assurance and rights mentioned in the 1st schedule to these presents were valued at £450; 5thly, the mortgage debts mentioned in the 2nd schedule to these presents were estimated at the sum of £8800, being the full amount thereof; 6thly, the book debts owing to the said partnership were ascertained (after allowing for bad and doubtful debts) to amount to the sum of £7240; and 7thly, the barrels, casks, waggons, drays, horses, implements, plant, utensils and materials, stock of beer, ale, porter, malt, hops, and other stock in trade belonging to the said business, were valued at the sum of £49,070: AND WHEREAS it appears from the books of the said

ASSIGNMENT  
OF SHARE IN  
REMAINING  
PARTNER-  
SHIP ASSETS  
TO SURVIV-  
ING  
PARTNER.

That for  
purposes of  
award the  
property  
and assets  
of the part-  
nership  
were valued  
at £167,350

That items  
were  
separately  
valued.

Freeholds  
and lease-  
holds at  
£91,000.

Goodwill at  
£10,000.

Gas shares  
at £200.

Policies and  
rights at  
£450.

Mortgage  
debts at  
£8800.

Book debts  
at £7240;

and plant  
and stock in  
trade at  
£49,868.

That sur-  
viving

ASSIGNMENT  
OF SHARE IN  
REMAINING  
PARTNER-  
SHIP ASSETS  
TO SURVIV-  
ING  
PARTNER.

partner was  
creditor for  
advances  
made  
beyond his  
share of  
capital.

That debts  
and  
liabilities  
came to  
£85,350,

leaving  
£82,000 net  
value of  
assets, and  
£41,000  
value of  
moiety.

That free-  
holds and  
leaseholds  
were subject  
to mort-  
gages for  
£37,300.

Agreement  
that said  
£41,000  
should be  
apportioned  
according  
to said  
valuations.

That  
£26,850 was  
accordingly  
net value of  
moiety of  
freeholds  
and lease-  
holds.

Agreement  
that £26,850  
should be  
deemed  
considera-  
tion for  
same.

£5000 for  
moiety of  
goodwill,

£100 for  
moiety of  
gas shares,

£225 for  
moiety of  
policies,

partnership that the said C. D. had brought into the business the sum of £5573 over and above his moiety of the capital thereof, for which sum of £5573 he was entitled to be deemed a creditor of the said firm under clause — of the said articles of partnership: AND WHEREAS the debts and liabilities of the said firm (including therein the said sum of £5573) were ascertained by the said valuers to amount to £85,350, which, being deducted from the aforesaid sum of £167,350, left the sum of £82,000 as the net value of the partnership property and assets, after allowing for debts and liabilities, and the sum of £41,000 as the net value of the moiety of each partner therein: AND WHEREAS the said freehold and leasehold messuages, lands, and hereditaments were at the death of the said X. B. subject to mortgages thereon amounting to £37,300, which sum is part of the said sum of £85,350: AND WHEREAS it has been arranged and agreed between the parties hereto that the said sum of £41,000 paid or secured to be paid to the said A. B. as aforesaid as and for the share of the said X. B. deceased, in the property and assets of the said partnership pursuant to the aforesaid award, shall be apportioned between the several items constituting the said assets and property upon the basis of the aforesaid valuation: AND WHEREAS the sum of £37,300, being the amount of the mortgage debts affecting the said freehold and leasehold premises, being deducted from the sum of £91,000 at which the said premises were valued as aforesaid, leaves the sum of £53,700 as the net value of the said premises, and the sum of £26,850 as the net value of one moiety thereof: AND WHEREAS it has accordingly been agreed that the said sum of £26,850 part of the said sum of £41,000 shall be deemed the purchase or consideration money for the moiety of the said X. B. deceased, in the said freehold and leasehold premises, subject to a moiety of the mortgage debts affecting the same, and that the sum of £5000 (other part of the said sum of £41,000), shall be deemed the purchase or consideration money for the moiety of the said X. Y. deceased in the goodwill of the said business, and that the sum of £100 (other part of the sum of £41,000) shall be deemed the purchase or consideration money for the moiety of the said X. Y. deceased in the said — gas shares, and that the sum of £225 (other part of the said sum of £41,000) shall be deemed the purchase or consideration money for the moiety of the said X. Y. deceased in the policies of assurance and rights

comprised in the first schedule to these presents, and that the remainder of the said sum of £41,000 shall be deemed the consideration money for the moiety of the said X. B. deceased in the mortgage debts mentioned in the second schedule hereto, and in the book debts, stock in trade and remaining assets of the said partnership, after allowing for the debts and liabilities of the said partnership other than the mortgage debts affecting the said freehold and leasehold premises: AND WHEREAS the moiety or other the part or share of the said X. B., deceased of and in the said freehold and leasehold premises, has been conveyed and assigned by the said A. B. unto the said C. D., his heirs, executors, administrators, and assigns, by five several indentures bearing even date with these presents, in consideration of the several sums of money amounting together to the sum of £26,850 in the same indentures respectively expressed to have been paid or satisfied by the said C. D. to the said A. B., the said sums of money being in fact part of the said sum of £41,000: AND WHEREAS the said — gas shares have been transferred by the said A. B. unto the said C. D., his executors, administrators, and assigns, by a proper deed for that purpose bearing even date with these presents in consideration of the sum of £100 (a) (being other part of the said sum of £41,000): AND WHEREAS the barrels, casks, waggons, carts, drays, horses, implements, plant, utensils, materials, stock of beer, ale, porter, malt, hops, and other stock in trade, belonging to the said business, being in the nature of personal chattels, have been delivered and handed over to the said C. D.: AND WHEREAS the mortgage debts mentioned in the second schedule to these presents have become vested in the said C. D., as the survivor of the mortgagees therein named: AND WHEREAS the greater part of the book debts owing to the said late firm, have been received by the said C. D., and the remainder thereof will be received by him as surviving partner: NOW THIS INDENTURE WITNESSETH that in consideration of the sums of £5000 and £225 (other part of the said sum of £41,000 paid or secured to be paid as aforesaid) the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns ALL THAT the moiety or other the share and interest

ASSIGNMENT  
OF SHARE IN  
REMAINING  
PARTNER-  
SHIP ASSETS  
TO SURVIV-  
ING  
PARTNER.

and  
remainder  
of £41,000  
for moiety  
of book  
debts, plant,  
&c., after  
allowing for  
debts.

Conveyance  
and assign-  
ment of  
moiety of  
freeholds  
and lease-  
holds by  
five separate  
deeds.

Transfer of  
gas shares.

Delivery of  
plant, stock  
in trade and  
moveable  
effects.

That mort-  
gage debts  
had become  
vested in  
surviving  
partner.

That book  
debts  
had been  
or would be  
received by  
surviving  
partner.

Witnessing  
part.

Executrix  
of deceased  
partner in  
considera-  
tion of  
£5000 and  
£225 assigns

(a) This transfer deed should be stamped with an *ad valorem* stamp on £100.



ASSIGNMENT  
OF SHARE IN  
REMAINING  
PARTNER-  
SHIP ASSETS  
TO SURVIV-  
ING  
PARTNER.

moiety of  
goodwill  
and policies  
of assur-  
ance  
unto sur-  
viving  
partner.

Further  
witnessing  
part.

Executrix  
acknow-  
ledges  
receipt of  
£41,000 in  
full satisfac-  
tion of share  
of deceased  
partner in  
assets,  
and cove-  
nants for  
further  
assurance.

late of the said X. B. deceased, of and in ALL THAT the goodwill of the said partnership business, and of and in all those policies of assurance, rights and things comprised in the first schedule to these presents, To HOLD the same unto the said C. D. his executors, administrators, and assigns: AND THIS INDENTURE ALSO WITNESSETH that the said A. B. doth hereby acknowledge and declare that the said sum of £41,000, part whereof has been paid, and the residue whereof is secured to be paid as aforesaid, is accepted by her, the said A. B., in full satisfaction of the share of the said X. B. deceased, in all the property and assets of the said partnership, and all claims and demands relating thereto: AND the said A. B. doth hereby for herself, her heirs, executors and administrators, covenant with the said C. D., his executors, administrators, and assigns, that she the said A. B., her executors, administrators, and assigns, will from time to time, and at all times, upon the request and at the cost of the said C. D., his executors, administrators, or assigns, make, do, and execute all such further acts, deeds, and things, for effectually vesting in him or them all the property and assets of the said late partnership, and enabling him or them to receive the same as by him or them shall be reasonably required (a).

IN WITNESS, &c.

---

THE FIRST SCHEDULE ABOVE REFERRED TO.

*(Two Policies of life assurance and certain exclusive rights of supplying public houses with beer, &c.)*

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THE SECOND SCHEDULE ABOVE REFERRED TO.

The principal sum of ——— secured by an indenture dated, &c., and made, &c.

The principal sum of £—— secured by, &c.

The principal sum of £—— secured by, &c.

All the above deeds provide that the moneys thereby secured shall be payable to the survivor of the mortgagees, but the said moneys in fact form part of the partnership assets

(a) It is considered that the stamps on this deed should be an *ad valorem* duty at 10s. per £100 on £5225, the consideration for the moiety of the goodwill and policies, &c., and a common deed stamp (10s.).

# MEMORIALS.

## No. I.

### FORM of a MEMORIAL of DEED of CONVEYANCE of FREEHOLDS (a).

OF A CON-  
VEYANCE OF  
FREEHOLDS

A MEMORIAL to be registered of an indenture, bearing date the — day of —, and made between A. B. of, &c., of the one part, and C. D., of, &c., of the other part: WHEREBY, for the considerations in the now memorializing indenture men-

(a) The particulars to be observed in drawing memorials are as follow:—

Particulars  
to be  
observed in  
drawing  
memorials.

The date of the deed or will must be mentioned, together with the names and additions of all the parties, and of the devisor (in the case of a will), and of all witnesses to the deed or will, and the places of their abode.

The description of the premises contained in the operative part of the deed should, in all cases, be set out in the memorial, and also that contained in any recital, to which the operative part of the deed has reference.

When a deed is indorsed on a former deed, and the parties and property are described by reference to the former deed, the memorial should give the dates of and parties to both deeds, together with the description of the premises from both deeds, and should state that the imported description is taken from the source referred to (Reg. v. Registrars of Middlesex, 15 Q. B. 967; 19 L. J. Q. B. 537).

How in-  
dorsements  
should be  
described.

Memorials must be under the hand and seal of some or one of the grantors, or some or one of the grantees, his or their heirs, executors or administrators, guardians or trustees, attested by *two witnesses*, one whereof to be one of the witnesses to the execution of the deed, which witness must, upon oath, prove the execution of the memorial and the deed; and in the case of wills, the memorial must be under the hand and seal of some or one of the devisees, his or their heirs, executors, or administrators, guardians or trustees, attested by two witnesses, one whereof shall, upon his oath prove the signing and sealing of such memorial, and shall indorse a certificate thereof on every such memorial, and sign the same.

Memorials  
how to be  
executed  
and at-  
tested

It is said that the one of the two attesting witnesses to the memorial should be a witness who attested the execution by the *granting* party, but this is doubtful. See *Jack v. Armstrong*, 1 Hud. & B. 727; Dart. 626.

By 33 & 34 Vict. c. 97, the following stamp duty is imposed on every memorial to be registered, pursuant to any Act of Parliament made, or to

Stamps on  
memorials.

OF A CON-  
VEYANCE OF  
FREEHOLDS.

tioned, the said A. B. did grant to the said C. D. ALL (*parcels, &c., as in the indenture, omitting the general words*): TO HOLD, &c.; WHICH said indenture, as to the execution thereof by the said A. B., is witnessed by E. F. of, &c., and as to the execution thereof by the said C. D. is witnessed by G. H. of, &c.

AS WITNESS the hand and seal of the said C. D.

Signed and sealed in the

presence of

C. D.

(*Two witnesses.*)

## NO. II.

OF AN  
ASSIGNMENT  
OF  
LEASEHOLDS.

FORM of MEMORIAL in CASES where the premises intended to be affected are expressed in the operative part of the DEED by reference to preceding recitals.

A MEMORIAL to be registered of an indenture, bearing date the — day of —, and made between A. B. of, &c., of the one part, and C. D. of, &c., of the other part. WHEREBY, after reciting an indenture, dated the — day of —, purporting to be a lease of ALL THAT (*here set out the description verbatim from the recitals referred to by the operative part of the deed*): AND also reciting another indenture, dated the — day of —, purporting to be a lease of all that (*the parcels*), for the considerations in the now memorialising indenture mentioned, the said A. B. did assign to the said C. D. the several pieces or parcels of ground, with the messuages or tenements thereupon erected, and all and singular other the premises comprised in and demised by the several thereinbefore in part recited indentures of lease, with the appurtenances: TO HOLD, &c.; WHICH said indenture as to the execution thereof by the said A. B. is witnessed by E. F. of, &c., and as to the execution thereof by the said C. D. is witnessed by G. H. of, &c.

AS WITNESS the hand and seal of the said C. D.

Signed and sealed in the

presence of

C. D.

(*Two witnesses.*)

be made for the public registering of deeds and conveyances in England or Ireland (that is to say):—

Where the instrument registered is chargeable }	The same duty as the registered instrument.
with any duty not amounting to 2s. 6d. . }	
In any other case . . . . .	2s. 6d.

## No. III.

## FORM of MEMORIAL of an ENDORSED DEED.

OF AN  
ENDORSED  
DEED.

A MEMORIAL to be registered of an indenture, dated the — day of —, 18— (endorsed on an indenture dated the — day of —, 18—, and made between A. B. of, &c., of the one part, and C. D. of, &c., of the other part, a memorial whereof was registered on — day of —, 18—, B. No. —). THE INDENTURE of which this is a memorial is made between the therein within-named C. D. of the one part, and E. F. of, &c., of the other part, whereby, for the considerations therein mentioned, the said C. D. did assign unto the said E. F. ALL AND SINGULAR the messuages or tenements, hereditaments and premises comprised in and demised by the therein within-written indenture with the appurtenances, and which premises are in the therein within-written indenture described as follows, that is to say: All that, &c., (*parcels*), To HOLD, &c.; WHICH indenture of assignment as to the execution thereof by the said A. B. is witnessed by E. F. of, &c., and as to the execution thereof by the said C. D. is witnessed by G. H. of, &c.

AS WITNESS the hand and seal of the said C. D.

Signed and sealed in the  
presence of

C. D.

(*Two witnesses.*)

## No. IV.

## FORM of MEMORIAL of a WILL.

OF A WILL.

A MEMORIAL to be registered of the last will and testament of A. B., late of, &c., deceased, dated the — day of —, whereby he devised and bequeathed all his real and personal estate and effects unto and to the use of C. D. of, &c., and E. F. of, &c., their heirs, executors, administrators, and assigns, upon and for the trusts, intents and purposes therein expressed and declared concerning the same, WHICH will was duly executed in the presence of (*witnesses*).

AS WITNESS the hand and seal of the said C. D., one of the said devisees.

Signed and sealed in the  
presence of

C. D.

(*Two witnesses.*)

## NOTICES, ETC.

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### No. I.

BY LAND-  
LORD  
TO TENANT.

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NOTICE *to quit by a LANDLORD to a TENANT from year to year.*

YOU are hereby required to quit and deliver up on the —— day of —— next [or on other the day on which the current year of your tenancy will expire next after the end of half a year from the time of your being served with this notice (a)] the possession of the messuage, &c. (*describe the property shortly*), which you now hold of —— (*landlord*). Dated the —— day of ——.

A. B. (*agent for the said landlord*).

To C. D. (*tenant*).

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### No. II.

BY TENANT  
TO  
LANDLORD.

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NOTICE *to quit by TENANT from year to year to LANDLORD.*

I HEREBY give you notice that I shall quit and deliver up on the —— day of —— next [or otherwise on the day on which the current year of my tenancy will expire next after the end of half a year from the time of your being served with this notice (a)] the possession of the messuage, &c. (*describe the property shortly*), which I now hold of you as a yearly tenant. Dated the —— day of ——

A. B. (*tenant*).

To C. D. (*landlord*).

(a) The words in brackets will be inserted wherever there is any doubt as to the day on which the tenancy commenced.

## No. III.

NOTICE *by* TENANT *to determine a* LEASE.

TO  
DETERMINE  
A LEASE.

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I HEREBY give you notice that, in pursuance of the power for this purpose given to me by the indenture of lease dated the — day of —, and made between you of the one part, and me of the other part, it is my intention to determine the lease thereby made on the — day of — next, and I shall therefore quit and deliver up possession to you of the messuage and premises situate at, &c., comprised in the said indenture of lease on the said — day of —.

AS WITNESS my hand this — day of —.

To C. D. (*landlord*).

A. B. (*tenant*).

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## No. IV.

NOTICE *by* LESSEE *to* LESSOR *of an assignment of*  
*leasehold premises.*

BY LESSEE  
TO LESSOR.

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I HEREBY give you notice that, by an indenture dated the — day of —, and made between myself of the one part, and C. D. of, &c., of the other part, I have assigned all the premises comprised in the indenture of lease dated the — day of —, and made between you of the one part, and me of the other part, unto the said C. D. for the residue of the term thereby granted.

AS WITNESS my hand this — day of —.

To G. H. (*original lessor*).

A. B. (*assignor*).

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## No. V.

NOTICE *by* a LESSOR *to his* LESSEE *requiring him to*  
*put the PREMISES in REPAIR pursuant to a*  
*COVENANT contained in the LEASE.*

TO TENANT  
TO REPAIR.

---

I HEREBY give you notice and require that in pursuance of the covenant in that behalf contained in the indenture of lease dated the — day of —, under which you hold the messuage and premises, No., &c. (*describing the premises shortly*), you do and

TO TENANT  
TO REPAIR.

execute within six calendar months from the date hereof, the repairs in and upon the said messuage and premises, which are specified in the schedule to this notice.

To C. D. (*tenant*).

A. B. (*landlord*).

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THE SCHEDULE ABOVE REFERRED TO.

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No. VI.

BY  
MORTGAGEE  
TO TENANT.

NOTICE *by* MORTGAGEE *to* TENANT *not to pay rent to*  
MORTGAGOR.

I HEREBY give you notice that, by an indenture dated the — day of —, and made between A. B. of, &c., of the one part, and me of the other part, the messuage and piece of ground situate at —, and now in your possession, were conveyed to me, my heirs and assigns, by the said A. B. by way of mortgage for securing the principal sum of £—, and interest thereon after the rates therein mentioned: and that under the said indenture the said principal sum is still due and owing, together with an arrear of interest thereon, and I therefore require you to pay to me the rent now and hereafter to accrue due in respect of the said premises, and on no account after the date hereof to pay any rent in respect of the said premises to the said A. B. or to any person or persons other than myself.

As WITNESS my hand the — day of —.

To C. D. (*tenant*).

A. B. (*mortgagee*).

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No. VII.

BY  
MORTGAGOR  
TO PAY OFF.

NOTICE *by* MORTGAGOR *to pay off at the expiration of*  
SIX MONTHS.

I HEREBY give you notice that, at the expiration of six calendar months from the date hereof, I shall pay unto you, your executors, administrators, or assigns, the principal moneys and interest due and owing to you from me, on the security of a certain indenture dated the — day of —, and made between me of the one part, and you of the other part.

As WITNESS my hand this — day of —.

To C. D. (*mortgagee*).

A. B. (*mortgagor*).

## No. VIII.

NOTICE *by* MORTGAGEE *to* MORTGAGOR *of intention to*  
*exercise* POWER *of* SALE.BY MORT-  
GAGEE OF  
INTENTION  
TO SELL.

I HEREBY require you to pay to me, at the expiration of six calendar months from the date of this notice, the principal sum of £—— secured by a certain indenture dated the —— day of ——, and made between you of the one part, and me of the other part, and all interest then due thereon, and I hereby give you notice that if you make default in such payment I shall proceed to sell the hereditaments and premises comprised in the said indenture, in pursuance and exercise of the power for that purpose given to me by the said indenture.

AS WITNESS my hand this —— day of ——.

To C. D. (*mortgagor*).

A. B. (*mortgagee*).

## IX.

NOTICE *by* MORTGAGEE *of intention to exercise* POWER  
*of* SALE, *to be left on the property, it not being*  
*known where the* MORTGAGOR *is.*BY MORT-  
GAGEE OF  
INTENTION  
TO SELL.

To C. D. (*mortgagor*), if living, or his legal personal representative, and all other persons whom this notice may concern.

I hereby require the payment to me of the principal sum of £—— secured by an indenture dated, &c., and made, &c. (*state date and parties*), and all interest due thereon, And I give notice that if the same shall not be paid to me within six calendar months after the date of this notice I shall proceed to sell the hereditaments comprised in the said indenture in pursuance and exercise of the power for that purpose given to me by the said indenture.

AS WITNESS my hand this —— day of —— 18—.

A. B. (*mortgagee*).

## X.

NOTICE *by* SECOND MORTGAGEE *to a* FIRST MORTGAGEE.OF SECOND  
MORTGAGEE  
TO FIRST  
MORTGAGEE.

I HEREBY give you notice that, by an indenture dated the ——



OF SECOND  
MORTGAGEE  
TO FIRST  
MORTGAGEE.

day of —, and made between A. B., of, &c., of the one part, and me of the other part, the messuage, lands, and hereditaments, situate, &c., now in mortgage to you from the said A. B., have been conveyed by the said A. B. unto and to the use of me, my heirs and assigns, by way of mortgage for securing the sum of £1000 and interest.

AS WITNESS my hand this — day of —.

To C. D. (*first mortgagee*). E. F. (*second mortgagee*).

### No. XI.

BY MORT-  
GAGEE  
UNDER BILL  
OF SALE.

#### NOTICE by MORTGAGEE under a BILL of SALE demanding payment of Principal and Interest.

I HEREBY demand payment, within twenty-four hours [or within — days, *as the case may require*] from the time when this notice is given to you or left at your house, of the sum of £— due to me upon the security of a certain indenture dated the — day of —, and made between you of the one part, and me of the other part, together with the sum of £— for interest from the — day of — last, AND I authorise you to pay the said money either to me personally at my house at — or to my account at the — Bank at — [or to my solicitors, Messrs. —, at their office at —, whose receipt shall be a sufficient discharge to you], AND I GIVE YOU NOTICE that if you make default in paying the money within the time aforesaid I shall proceed to take possession of the chattels and things comprised in the said indenture, and to remove and dispose of the same.

AS WITNESS my hand this — day of —.

To C. D. (*mortgagor*). A. B. (*mortgagee*).

### No. XII.

TO PRODUCE  
DEEDS.

#### NOTICE to produce TITLE DEEDS.

I HEREBY give you notice to produce to Mr. — (*solicitor*), of —, solicitor, on the — day of — next, on his application at your residence in —, all the deeds and writings mentioned or referred to in a certain indenture, dated the — day of —, by which the same were covenanted to be produced by you to me, my heirs or assigns: AND I hereby undertake to

pay the reasonable costs which may be incurred in or about the production of the said deeds and writings on your informing me of the amount thereof. TO PRODUCE  
DEEDS.

AS WITNESS my hand this — day of —.

To C. D. (*covenantor*).

A. B. (*covenantee*).

### No. XIII.

NOTICE *by LESSEE to LESSOR of Election to Purchase* OF ELECTION  
TO  
PURCHASE.  
*the FREEHOLD and INHERITANCE of Premises, pur-*  
*suant to a Power contained in the Lease for this*  
*purpose (a).*

I HEREBY give you notice that, pursuant to the power for this purpose given to me by an indenture of lease, dated the — day of —, whereby certain hereditaments and premises, situate, &c., were demised by you to me for the term of — years, I elect and agree to purchase the said hereditaments and premises, and the inheritance thereof in fee simple, at the price of £—, and to pay the purchase-money, and in all respects to comply with the terms prescribed by the said indenture of lease in respect of such purchase by me; and I request you, on or before the expiration of one calendar month from the date hereof, to make out and deliver to me an abstract of the title to the said hereditaments and premises, according to the stipulation for this purpose contained in the said indenture of lease.

AS WITNESS my hand this — day of —.

To A. B. (*lessor*).

C. D. (*lessee*).

### No. XIV.

NOTICE *by EXECUTORS to the CREDITORS of a TESTATOR to* BY EXE-  
CUTORS TO  
CREDITORS.  
*send in particulars of their Debts.*

A. B. deceased.—PURSUANT to an Act of Parliament made and passed in the twenty-second and twenty-third years of the reign of her present Majesty, cap. 35, intituled “An Act to further

(a) *Supra*, p. 38.

BY EXECUTORS TO CREDITORS.

amend the Law of Property and to relieve Trustees" (b), notice is hereby given that all creditors and persons having any claims or demands upon or against the estate of A. B., late of —, in the county of —, deceased (who died on or about the — day of —, and whose will was proved by C. D. of —, and E. F. of —, the executors therein named, on the — day of —, in the principal registry of the Probate Division of the High Court of Justice), are hereby required to send in the particulars of their claims and demands to the said C. D. and E. F., or to the undersigned, their solicitors, on or before the — day of —, and notice is hereby also given that after that day the said executors will proceed to distribute the assets of the deceased among the parties entitled thereto, having regard only to the claims of which the said executors shall then have notice, and that they will not be liable for the assets or any part thereof so distributed to any person of whose debt or claim they shall not then have had notice. Dated this — day of —.

M. N. and O. P. (*solicitors for the executors*).

#### No. XV.

NOTICE BY ASSIGNEE OF ASSIGNMENT.

NOTICE by ASSIGNEE of the ASSIGNMENT of a *reversionary Interest in Personality to the TRUSTEES in whose Names the Property stands.*

Notice to trustees of assignment by way of mortgage.

I, G. H. of, &c., DO HEREBY give you notice that by an indenture dated the — day of —, and made between A. B. of, &c., of

(b) By 22 & 23 Vict. c. 35, s. 29, it is provided that where an executor or administrator shall have given such or the like notices as in the opinion of the court in which such executor or administrator is sought to be charged would have been given by the Court of Chancery in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets, or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively.

the one part, and me of the other part, ALL that the one equal third part or share of the said A. B., under or by virtue of the will of L. M., late of —, deceased, dated the — day of — (expectant on the decease or marriage, whichever shall first happen, of N. O.), of and in the sum of £— £3 per Cent. Consolidated Annuities, and of and in all other the residuary personal estate and effects of the said L. M. deceased, and the proceeds thereof, and of and in the stocks, funds, and securities in or upon or of which the same or any part thereof may be invested or consist, and the income and accumulations thereof respectively, have been assigned by the said A. B. unto me, my executors, administrators, and assigns, by way of mortgage, for the purpose of securing to me, my executors, administrators, and assigns, the sum of £— and interest thereon, as therein mentioned.

NOTICE BY  
ASSIGNEE  
OF  
ASSIGNMENT.

AS WITNESS my hand this — day of —, 18—.

G. H. (*mortgagee*).

To Messrs. X. Y. and Y. Z. (*trustees of will*).

#### No. XVI.

NOTICE *by one PARTNER to another, to determine a PARTNERSHIP under a power.*

TO DETER-  
MINE PART-  
NERSHIP.

PURSUANT TO THE POWER for this purpose contained in certain articles of partnership, dated the — day of —, and made between you of the one part, and me of the other part, I hereby give you notice, that it is my intention to determine the partnership now subsisting between us under the said articles at the expiration of six calendar months, to be computed from the date hereof.

AS WITNESS my hand this — day of —.

A. B. (*partner*).

To C. D. (*other partner*).

## No. XVII.

OF DISSOLU-  
TION OF  
PARTNER-  
SHIP.

NOTICE *of DISSOLUTION of PARTNERSHIP to be in-  
serted in the London Gazette.*

NOTICE IS HEREBY GIVEN, that the partnership which has for some time past been carried on by A. B. and C. D. under the firm of —, at —, in the trade or business of —, was this day dissolved by mutual consent.

AS WITNESS our hands.

A. B.  
C. D.

## No. XVIII.

DIRECTION  
TO TRUSTEES  
TO CHANGE  
INVEST-  
MENTS.

DIRECTION *by HUSBAND and WIFE, whose consent is  
made requisite to any change of INVESTMENT, to  
sell out STOCK and to advance the produce at interest  
on MORTGAGE of a REAL ESTATE.*

Direction  
to trustees  
to sell out  
stock and  
advance  
moneys on  
mortgage.

WE, A. B. of, &c., and C. his wife, hereby request that under the power for this purpose given to you by an indenture dated the — day of — (being the settlement made on our marriage), you will forthwith by the sale of a competent part of the sum of £1000 £3 per Cent. Consolidated Annuities, now standing in your names in the books of the Governor and Company of the Bank of England as trustees of the said indenture, raise the sum of £— sterling, and invest the same on mortgage of the farm and lands called the — farm, situate in the parish of —, in the county of —, belonging to E. F. of, &c., at interest after the rate of £4 per cent. per annum.

AS WITNESS our hands this — day of —.

A. B. and C. B. (*husband and wife*).

To L. M. and N. O. (*trustees of settlement*).

## No. XIX.

DIRECTION  
TO TRUSTEES  
TO SELL  
LANDS.

DIRECTION *by the TENANT for LIFE under a settle-  
ment to the TRUSTEES to sell LANDS under a power  
of sale and exchange, and to INVEST the PRODUCE  
in the PURCHASE of other LANDS.*

I, A. B. of, &c., hereby request that under the power of sale contained in an indenture of settlement dated the — day of

—, and made in contemplation of my marriage with —, you will forthwith sell the lands and hereditaments comprised in the said indenture, or a competent part thereof, and will lay out and invest the moneys arising from such sale, or a sufficient portion thereof, in the purchase of certain lands and hereditaments in the parish of —, in the county of —, now the property of L. M. of, &c., Esq., to whom the same were conveyed by an indenture dated the — day of —, and made between (*parties*).

DIRECTION  
TO TRUSTEES  
TO SELL  
LANDS.

AS WITNESS my hand this — day of —.

A. B. (*tenant for life*).

To E. F. and G. H. (*trustees of settlement*).

### No. XX.

DIRECTION by HUSBAND and WIFE to TRUSTEES to make immediate payment of part of DAUGHTER'S expectant share in the TRUST MONEYS, pursuant to a power of advancement.

DIRECTION  
TO TRUSTEES  
TO PAY  
PART OF  
DAUGHTER'S  
SHARE.

WE, A. B., of, &c., and C. his wife, hereby request that, under the power for this purpose contained in a certain indenture, dated, &c., and made, &c. (being the settlement made on our marriage), you will forthwith advance and pay the sum of £— out of the trust moneys and property comprised in the said indenture of settlement unto our daughter —, as an advancement for her benefit in the prospect of the marriage now intended to be shortly solemnised between her and —.

AS WITNESS our hands this — day of —.

A. B. and C. B. (*husband and wife*).

To E. F. and G. H. (*trustees*).

### No. XXI.

LICENCE by a LORD of a MANOR to his COPYHOLD TENANT to LEASE for twenty-one YEARS.

LICENCE BY  
LORD OF  
MANOR TO  
COPYHOLD  
TENANT

I, A. B. of, &c., the lord of the manor of —, in the county of —, hereby authorise you to demise the copyhold messuage

LICENCE BY  
LORD OF  
MANOR TO  
COPYHOLD  
TENANT.

or tenement, situate, &c. (to which you were admitted tenant at a Court held for the said manor on the — day of —), for a term of twenty-one years, to be computed from the — day of — now next ensuing.

AS WITNESS my hand this — day of —.

A. B. (*lord of the manor*).

To C. D. (*tenant*).

### No. XXII.

BY LESSOR  
TO LESSEE.

#### LICENCE *by LESSOR to LESSEE to ASSIGN the PREMISES for the RESIDUE of the TERM.*

I, A. B. of, &c., hereby authorise you to assign the messuage and premises situate at, &c., comprised in a certain indenture dated the — day of —, and made between me| of the one part and you of the other part, for the residue of the term of twenty-one years thereby created, yet so that, save and except the assignment hereby authorised to be made, no future assignment or underlease of the said messuage or premises during the said term shall be made without the written consent of myself, my heirs or assigns.

AS WITNESS my hand this — day of —.

A. B. (*lessor*).

To C. D. (*lessee*).

### No. XXIII.

LICENCE TO  
UNDERLET.

#### LICENCE (*a*) *from LESSOR to LESSEE to grant an UNDERLEASE of PART of the DEMISED PREMISES upon CONDITION that the UNDERLESSEE shall not ASSIGN or UNDERLET without the CONSENT of the SUPERIOR LESSOR.*

Parties.

THIS INDENTURE, made the — day of — 18—, BETWEEN A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*),

(*a*) As this instrument contains a covenant, it should be under seal; but a simple licence to assign may be by writing only, unless a deed is expressly required by the lease.

of the other part: WHEREAS by an indenture of lease dated &c., and made, &c., the said A. B. did demise certain lands and hereditaments therein described unto the said C. D., his executors, administrators, and assigns, from the 24th day of June then last for the term of twenty-one years thence next ensuing, at the yearly rent of £——, and subject to the covenants and conditions therein contained, and on the lessee's part to be observed and performed (including a covenant not to assign or underlet without the licence or consent in writing of the said A. B., his heirs or assigns first had and obtained, and a proviso or condition for re-entry on breach of any of the said covenants therein contained): AND WHEREAS the said C. D. has requested the said A. B. to grant his licence and consent to such underlease as is hereinafter mentioned, which the said A. B. has agreed to do, subject to such covenants and conditions as are hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement the said A. B. doth hereby GIVE and GRANT to the said C. D. LICENCE and AUTHORITY to underlet to E. F. of, &c., ALL, &c. (*describe parcels*), being part of the premises demised by the said indenture of lease FROM the —— day of —— last, for the residue of the said term of twenty-one years granted by the said indenture of lease (except the last ten days thereof), SUCH underlease to be subject to the covenants and conditions contained in the said indenture of lease, on the part of the lessee to be observed and performed (except the covenant for payment of rent) so far as the same covenants and conditions relate to the premises to be comprised in such underlease, and to be made on the express condition that the said E. F., his executors, administrators, or assigns shall not at any time assign, underlet, or otherwise part with the last mentioned premises, or any part thereof, for the whole or any part of the term to be granted by such underlease, without the licence or consent in writing of the said A. B., his heirs or assigns first had and obtained: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said licence hereinbefore granted, the said C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his heirs and assigns, that he the said C. D., his heirs, executors, administrators, or assigns will not, without the licence or consent in writing of the said A. B. his heirs or assigns, release or waive the condition against assignment or underletting upon

LICENCE TO  
UNDERLET.

Recital of  
lease.

Request by  
lessee to  
lessor to  
grant  
consent to  
underlease.

Witnessing  
part.

Lessor  
grants to  
lessee  
licence to  
underlet  
part of  
demised  
premises for  
residue of  
original  
term, except  
ten days,  
subject to  
covenants  
and condi-  
tions of  
superior  
lease, and  
to a new  
condition  
against  
assignment  
or sub-  
letting  
without  
consent of  
superior  
lessor

Covenant by  
lessee not to  
waive con-  
dition  
against  
assignment,  
&c., to be  
inserted in  
underlease  
without  
lessor's  
consent,



LICENCE TO  
UNDERLET,

Proviso that  
condition of  
re-entry in  
superior  
lease shall  
extend to a  
breach of  
the above  
covenant.

which the said underlease is hereinbefore stipulated to be made, but will (unless otherwise directed by the said A. B., his heirs or assigns) re-enter on the premises comprised in the same underlease in case of any breach of such condition, and otherwise take full advantage thereof: PROVIDED ALWAYS, and it is hereby agreed and declared, that the proviso or condition for re-entry contained in the hereinbefore recited indenture of lease shall be exercisable, not only in case of the breach of any of the covenants contained in the same indenture, but also in case of the breach of the covenant hereinbefore contained.

IN WITNESS, &c.

#### No. XXIV.

LICENCE TO  
UNDER-  
LESSEE TO  
ASSIGN.

Recite lease  
and under-  
lease.

#### LICENCE by SUPERIOR LESSOR and UNDERLESSOR to an UNDERLESSEE to assign.

Application  
by under-  
lessee for  
licence to  
assign.

Superior  
lessor and  
underlessor  
give licence  
to under-  
lessee to  
assign.

WHEREAS (*recite lease from A. B. to C. D. as in last precedent*), AND WHEREAS by an indenture of underlease dated, &c., and made, &c., the said C. D. (having first obtained the licence and consent in writing of the said A. B.) did demise all, &c. (*parcels*), unto the said E. F., his executors, administrators, and assigns, for all the residue of the said term of twenty-one years granted by the said indenture of lease as aforesaid, except the last ten days thereof, at the yearly rent of £—, and subject to the covenants therein contained, and on the lessee's part to be observed and performed, being covenants to the like effect as the lessee's covenants contained in the said indenture of lease of the — day of —, and also a covenant by the said E. F. not to assign or underlet without the licence or consent in writing of the said C. D., his executors, administrators, or assigns, and also of the said A. B., his heirs or assigns, first had and obtained, and subject also to a condition for re-entry on breach of any of the said covenants: AND WHEREAS the said E. F. has requested the said A. B. and C. D. to grant their licence and consent to such assignment as is hereinafter mentioned, which they have agreed to do: NOW THEREFORE the said A. B. and C. D. do, and each of them doth, hereby give and grant to the said E. F., licence and authority to assign all the premises comprised in the said indenture of underlease of the — day of —,

18—, unto G. H. of, &c., his executors, administrators, and assigns, subject to the rent, covenants, and conditions by and in the said indenture of underlease contained, and on the underlessee's part to be observed and performed, including the covenant against assigning and underletting without consent, which covenant shall remain in full force as against the said G. H., his executors, administrators, or assigns.

LICENCE TO  
UNDER-  
LESSEE TO  
ASSIGN.

---

AS WITNESS the hands of the said A. B. and C. D. this — day of —.

## POWERS OF ATTORNEY (a).

### No. I.

FROM PER-  
SON GOING  
ABROAD.

#### POWER of ATTORNEY from a PERSON GOING to RESIDE ABROAD (b).

Appoint-  
ment of  
attorney,

to manage  
lands.

Definition  
of a power  
of attorney  
and its  
liability to  
revocation.

Trustees,  
&c., making  
payments,  
&c., under  
power of  
attorney,  
without  
notice of  
death of  
principal,  
indem-  
nified.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*appointor*), being about to leave England and to reside abroad for some time, do hereby constitute and appoint C. D., of, &c., and E. F., of, &c., and each of them, my true and lawful attorneys and attorney for the purposes hereinafter expressed, that is to say, To receive the rents and profits of and manage all the messuages, farms, lands, tenements, and hereditaments

(a) A power of attorney is an authority given in due form of law by one person to another to act for him. A power of attorney is revocable by the grantor at any time, unless given for a valuable consideration. (*Walsh v. Whitcomb*, 2 Esp. Ca. 565 ; *Smart v. Sandars*, 5 Com. Bench, 916.) And it determines on his death. (*Watson v. King*, 4 Campb. 272 ; *Wallace v. Cook*, 5 Esp. Ca. 117.) Consequently on the purchase of an estate under a power of attorney, or on the surrender of a copyhold estate by attorney, the purchaser is entitled to evidence that the vendor himself was alive at the date of the completion of the purchase.

By 22 & 23 Vict. c. 35, s. 26, it is provided that no trustee, executor, or administrator making any payment, or doing any act *bond fide* under or in pursuance of any power of attorney, shall be liable for the moneys so paid, or the acts so done, by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bond fide* done as aforesaid by such trustee, executor, or administrator, was not known to him : provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made, as he would have had against the trustee, executor, or administrator if the money had not been paid away under such power of attorney.

(b) The power should of course be adapted to the actual property of the grantor, and to the extent of the authority which he wishes to entrust to his attorney. The above power is more comprehensive than would generally be required. More limited powers are given in the subsequent *Precedents*.

FROM PER-  
SON GOING  
ABROAD.

of or to which I, or any person or persons in trust for me, now am, is, or are, or at any time or times hereafter shall or may become seised, possessed, or entitled for any estate or interest whatsoever, with liberty in the course of such management to let or demise the said premises, or any part thereof, either from year to year or for any term or number of years, or for any less period than a year, at such rents, and either with or without any fine or premium, and subject to such covenants and conditions as my said attorneys or attorney shall think fit; and with liberty also to accept surrenders of leases or tenancies, to make allowances to and arrangements with lessees, tenants, and others, to cut timber and other trees, whether for repair, sale, or otherwise, to repair and rebuild houses or other buildings, and to insure the same against damage by fire, tempest, or otherwise, to repair fences, to drain or otherwise improve the said premises, or any part thereof, to appoint and employ bailiffs, gamekeepers, agents, servants and others to assist in the management of the said premises, and to remove them and appoint others in their place, and to pay and allow to the persons to be so employed as aforesaid such salaries, wages, or other remuneration as my said attorneys or attorney shall think fit: AND with power also to give effectual receipts and discharges for the rents and profits of the said premises, and on non-payment of any such rent, or any part thereof, or the breach of any covenant, agreement, or condition which ought to be observed or performed by any lessee or tenant of the said premises, or any part thereof, to distrain for such rent, or to commence, carry on, and prosecute any actions or other proceedings whatsoever for compelling payment of such rent, or for or on account of any such breach of covenants as aforesaid as my attorneys or attorney shall think fit, AND generally to do all such acts or things in or about the management of the said premises as my said attorneys or attorney might do if they or he were or was the absolute owners or owner thereof: ALSO to use and take all such lawful ways and means for the recovering and receiving, obtaining or getting, defending or protecting any messuages, farms, lands, and hereditaments, which do or shall, or which by my said attorneys or attorney shall be conceived, or thought to belong to me, as fully and effectually as I myself might or could use or take if I were personally present and did the same: ALSO to ask, demand, sue for, recover and receive all sums of money,

To recover  
moneys, &c.

FROM PERSON GOING ABROAD.

goods, effects, and things now owing, or payable, or belonging to me, or which shall at any time or times hereafter be owing or belong to me, by virtue of any security or upon any balance of accounts, or otherwise howsoever, and on payment, transfer, or delivery thereof, or of any part thereof respectively, to give, sign, and execute receipts, releases, and other discharges for the same respectively; and on non-payment, non-transfer, or non-delivery thereof, or of any part thereof respectively, to commence, carry on, and prosecute any action, or other proceeding whatsoever for recovering and compelling the payment, transfer, or delivery thereof respectively: ALSO to state, settle, adjust, compound, submit to arbitration, and compromise all actions, suits, accounts, reckonings, claims, and demands whatsoever, which now are or hereafter shall or may be depending between me and any person or persons whomsoever, in such manner in all respects as my said attorneys or attorney shall think fit; ALSO to sell and convert into money any goods, effects, or things, which now belong or at any time or times hereafter shall belong to me (c); ALSO to sell or exchange all or any of the messuages, farms, lands, tenements, and hereditaments belonging to me, for such price or prices, or other equivalent or satisfaction in land or money, and by such ways and means as my said attorneys or attorney shall think reasonable, and so that any sale either of real or personal property under the power hereby conferred may be either by public auction or private contract, and such property may be sold either together or in lots, and subject to any special conditions relative to title or otherwise, and my said attorneys or attorney may buy in any property at any sale by auction, or rescind any contract for sale, and resell the property so bought in, or the contract for the sale whereof may be so rescinded as aforesaid: AND I authorise and direct my said attorneys or attorney to pay all moneys which shall come to their or his hands by virtue of any of the powers herein contained, or so much thereof as shall remain after paying thereout the costs, charges, and expenses incurred by them or him in the exercise of any of the powers and authorities herein contained, into my account at the — Bank, or otherwise to pay and apply the same as I shall from time to time by letter or otherwise direct: AND I also authorise my said attorneys or attorney to

to bring actions, &c.,

to settle and compromise, &c.,

To sell goods and effects.

To sell or exchange lands.

And to apply moneys coming to attorneys in payment of costs, &c.

To appear

(c) This will not authorise a sale of government stock. The Bank of England will only act on a special power of attorney for sales of stock.

appear for me in any court of justice to any action or other proceeding which may be instituted against me, or whereunto I shall be a party, and to defend the same, or suffer judgment to be had or given against me in any such action or other proceeding, by default or otherwise, as they or he my said attorneys or attorney shall be advised or think proper: AND also to enter into, make, sign, seal, execute, deliver, acknowledge, and perform any contract, agreement, deed, writing, or thing that may in the opinion of my said attorneys or attorney be necessary or proper to be entered into, made, signed, sealed, executed, delivered, acknowledged, or performed for effectuating the purposes aforesaid, or any of them, and for all or any of the purposes of these presents to use the name of me the said A. B. : AND GENERALLY to do, execute, and perform any other act, deed, matter, or thing whatsoever, which ought to be done, executed, or performed, or which, in the opinion of my said attorneys or attorney ought to be done, executed, or performed in or about my concerns, engagements, and business of every nature and kind whatsoever, as fully and effectually to all intents and purposes as I myself could do if I were present and did the same in my proper person, it being my intent and desire that all matters and things respecting the same shall be under the full management and direction of the said attorneys or attorney; AND I further declare that each one of them the said C. D. and E. F. may act in the several powers and authorities hereby conferred separately and apart from the other of them [AND FOR THE FURTHER, better, and more effectually doing, effecting, executing, and performing of the several matters and things aforesaid, I hereby give and grant unto my said attorneys, and each of them, full power and authority from time to time to appoint one or more substitute or substitutes to do, execute, and perform all or any such matters and things as aforesaid; and the same substitute or substitutes at pleasure to remove, and to appoint another, or others, in his or their place or places] (*d*); and all and whatsoever my said attorneys, or either of them [or their or his substitute or substitutes] (*d*), shall do or cause to be done in or about the premises, I do hereby for myself, my heirs, executors, and administrators, covenant with the said C. D. and E. F., their executors and administrators to allow, ratify, and confirm.

IN WITNESS, &c.

(*d*) The words within brackets will be omitted where the grantor does not wish to confer on his attorney a power of appointing substitutes.

FROM PERSON GOING ABROAD.

for donor, power,

and also to execute contracts, deeds, &c.,

and generally to do all other acts.

Powers to attorneys to appoint substitutes,

and to remove them at pleasure.

## No. II.

TO RECEIVE  
RENTS, DIS-  
TRAIN, ETC.

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POWER of ATTORNEY *to receive RENTS, and distrain for the same, and also to receive SUMS consigned to the DONOR of the POWER (a).*

Recites seisin  
of certain  
lands by  
donor.

Desire to  
appoint  
attorney.

Appoint-  
ment of  
attorney

to receive  
rents,

and distrain  
for the same,

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B. of, &c. (*appointor*), SEND GREETING: WHEREAS I, the said A. B., am seised of and entitled to divers messuages and tenements, situate and being in the county of —, and elsewhere, and am likewise frequently in the habit of receiving money remitted to me from abroad by —: AND WHEREAS I am desirous of appointing my son C. D. of, &c. (*attorney*), to act as my attorney for the purposes hereinafter expressed: Now KNOW ALL MEN by these presents, that I, the said A. B. do hereby constitute and appoint my said son C. D. my true and lawful attorney, for me and on my behalf, from time to time and at any time hereafter, to ask, demand, sue for, recover, and receive of and from the persons who ought to pay the same, the rents or sums of money which now are, or hereafter shall or may at any time or times during the subsistence of these presents, grow or become due or payable from and out of or in respect of any of the said messuages or tenements, and from time to time upon receipt thereof, for me and in my name to give and sign good and sufficient receipts and discharges for the same: AND also to pay, settle, adjust, deduct, and allow all accounts, claims, and demands for ground rent, land tax, and repairs, and other lawful deductions, and upon non-payment of the said yearly rents, or any of them, or any part or parts thereof, for me and in my name, into and upon the same premises, or any part thereof, to enter, and to seize and distrain all or any goods, chattels, or effects which shall then and there be found, or which shall have been thenceforth unlawfully removed, and every or any such distress or distresses to take, carry away and to dispose of according to law to the intent that the said rents and all arrears thereof, and all

(a) It is supposed in this case that the grantor has no property beyond the real estate and the consignments from India, which it is necessary to place under the control of an agent,

costs and charges attendant upon such distress, shall be fully paid and satisfied: AND also for me the said A. B., and in my name or otherwise, to receive all and every sums and sum of money whatsoever which are or is, or at any time hereafter may be consigned to me from India or elsewhere, by or on account of the said —, and on receipt thereof to sign and give good and sufficient receipts, releases, acquittances, and other discharges for the same: AND I THE SAID A. B. hereby grant unto the said C. D. full and sufficient power and authority, in and concerning the premises, for all and every or any of the purposes aforesaid, and agree to ratify and confirm all and whatsoever the said C. D. shall lawfully do in and concerning the premises by virtue of these presents.

TO RECEIVE  
RENTS, DIS-  
TRAIN, ETC.

and also to  
receive all  
sums con-  
signed to  
donor of  
power.

IN WITNESS, &c.

### No. III.

#### POWER of ATTORNEY to receive DEBTS.

TO RECEIVE  
DEBTS.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*appointor*), do hereby constitute and appoint C. D. of, &c. (*attorney*), my true and lawful attorney for me, in my name or otherwise for my use, to ask, demand, receive, sue for, and recover all and every sums and sum of money whatsoever that are or is now due and owing to me of and from E. F. of, &c., and on receipt or payment thereof, or of any part thereof, for me and in my name proper receipts and discharges for the same to sign and deliver, and to do all other lawful acts and things in and about the premises as effectually as I could do the same if I were personally present: AND ALL and whatsoever the said C. D. shall lawfully do in the premises, I, the said A. B., do hereby agree to ratify and confirm.

To receive  
debts.

IN WITNESS, &c.

### No. IV.

#### POWER of ATTORNEY to SELL a LANDED ESTATE, and MANAGE same in meantime (a).

TO SELL  
LAND.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., late of, &c., and now residing at, &c., do hereby appoint C. D. of, &c.

Appoint-  
ment of  
attorney

(a) See the next Precedent.



TO SELL  
LAND.  
to sell  
estate, with  
usual  
powers,  
and to  
convey to  
purchaser  
and give  
receipts for  
purchase-  
money,  
and to  
manage  
premises  
until sale,  
with usual  
powers.

(attorney), to be my true and lawful attorney for me and on my behalf and in my name to sell at such time or times as my said attorney shall think fit, ALL, &c. (*describe shortly the estate*), and the inheritance thereof in fee simple, either together or in lots, and either by public auction or private contract, and either with or without special conditions as to title or otherwise, with liberty to buy in at any sale by auction, to rescind or vary contracts for sale, and to re-sell without being answerable for any loss arising thereby: AND ALSO to execute such deed or deeds for conveying the said premises to any purchaser or purchasers thereof, with such usual and proper covenants for title limited to my acts and defaults and the acts and defaults of my ancestors, and persons rightfully claiming under me or my ancestors, and also to give effectual receipts and discharges for the purchase moneys of the said premises as my said attorney shall think fit: AND ALSO in the meantime and until such sale to receive the rents and profits of the said premises, and to recover the same when in arrear by action or distress, and generally to manage the said premises with liberty in the course of such management to let or demise the said premises or any part thereof either from year to year or for any term of years not exceeding twenty-one years to take effect in possession at and under such rents and covenants as my said attorney shall think fit, and with liberty also to make allowances to and arrangements with tenants, to cut timber and other trees for repairs, sale, or otherwise, to expend money in repairs and improvements and insurances against loss or damage by fire, tempest or otherwise, and to do such other acts and things in or about the management of the said premises as my attorney shall think fit: AND WHATSOEVER my said attorney shall lawfully do in the premises I hereby agree to ratify and confirm.

IN WITNESS, &c.

## No. V.

DEED of CONVEYANCE of land by Person resident abroad to a TRUSTEE in trust for SALE, and for MANAGEMENT in the meantime (instead of a power of Attorney) (a). CONVEYANCE IN TRUST INSTEAD OF POWER OF ATTORNEY.

THIS INDENTURE, made the — day of —, BETWEEN Parties, A. B. of, &c. (*owner*), of the one part, and C. D. of, &c. (*trustee*), of the other part, WITNESSETH, that for divers good causes and considerations the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, ALL (*parcels—general words* —and all the estate, &c.), TO HOLD the same unto and to the use of the said C. D., his heirs and assigns, UPON TRUST that the said C. D., his heirs or assigns shall at such time or times as he or they shall think fit without any further consent on the part of the said A. B., his heirs or assigns, sell the said premises either together or in lots, and either by public auction or private contract, and either with or without special conditions as to title or otherwise, with power to buy in at sales by auction, and to rescind or vary contracts for sale, and to resell without being answerable for any loss arising thereby, and with power also to execute conveyances, to give effectual receipts for the purchase money, and to do all other acts and things for carrying into effect any such sale as the said trustee or trustees shall think fit: AND shall in the meantime and until such sale receive the rents and profits of the said premises and manage the same, with liberty in the course of such management to let or demise the said premises or any part thereof either from year to year or for any term of years not exceeding twenty-one years, to take effect in possession at and under such rents and covenants as the said trustee or trustees shall think fit, and with liberty also to make allowances to and arrangements with tenants, to cut timber and other trees whether for repairs, sale, or otherwise, to Grant of lands to trustees in trust to sell with usual powers, and to receive rents and manage in the meantime.

(a) As before observed, a purchaser under a power of attorney must in order to be safe satisfy himself that the principal is alive at the time when the conveyance is executed. In order to obviate this necessity, which is often inconvenient, it is suggested that instead of giving a power the owner should vest the property by a conveyance in the intended attorney, upon proper trusts for sale and management in the meantime as in the above Precedent. Suggestion that a conveyance in trust is more convenient than a power of attorney.

CONVEYANCE  
IN TRUST  
INSTEAD OF  
POWER OF  
ATTORNEY.

Declaration  
of trust of  
sale moneys  
and rents

after paying  
expenses

for grantor  
as personal  
estate.

Covenants  
for title  
by grantor.

expend money in repairs and improvements, and insurances against loss or damage by fire, tempest, or otherwise, and generally to do such acts and things in or about the management of the said premises as the said trustee or trustees shall think fit : AND IT IS DECLARED that the said trustee or trustees shall with and out of the moneys to arise from any sale or sales as aforesaid, or to be received for rents and profits in the meantime, pay and discharge all costs and expenses incurred in or about any such sale or the management of the said premises or otherwise in or about the execution of the trusts and powers herein contained, and shall stand possessed of the residue of the said sale, moneys, rents, and profits, IN TRUST for the said A. B., his heirs, executors, administrators, and assigns, and so that as between the real and personal representatives of the said A. B., the said sale moneys, rents, and profits shall be deemed personal estate whether the premises shall be sold in the lifetime of the said A. B. or after his decease : AND the said A. B. doth hereby for himself, his heirs, executors, and administrators covenant with the said C. D., his heirs and assigns, that notwithstanding anything by him the said A. B. or any of his ancestors done or knowingly suffered to the contrary, he the said A. B. now hath good right to grant the said premises in manner aforesaid, AND THAT the said C. D., his heirs and assigns, shall and may at all times hereafter peaceably and quietly possess and enjoy the said premises, and receive the rents and profits thereof without any lawful interruption by the said A. B. or any person lawfully or equitably claiming from, under, or in trust for him or from or under any of his ancestors, AND that free from all incumbrances whatsoever made or suffered by the said A. B. or any of his ancestors or any person lawfully or equitably claiming as aforesaid : AND FURTHER, that he the said A. B. and all persons lawfully or equitably claiming as aforesaid, will at all times hereafter at his or their own cost until the said premises shall be sold under the trust hereinbefore declared, and after any such sale at the cost of the person or persons requiring the same, do and execute, or cause to be done and executed, all such acts, deeds, and things for further and more perfectly assigning the said premises unto the said C. D., his heirs or assigns in manner aforesaid, as by him or them shall be reasonably required.

IN WITNESS, &c.

## No. VI.

## POWER of ATTORNEY to Surrender COPYHOLD HEREDITAMENTS in favour of a Purchaser.

TO SURRENDER COPYHOLD TO PURCHASER

KNOW ALL MEN that I, A. B. of, &c. (*appointor*), one of the customary or copyhold tenants of the manor of —, in the county of —, do hereby constitute and appoint C. D. of, &c. (*attorney*), my true and lawful attorney, for me and in my name, and either at the next or any subsequent court to be holden for the said manor, or out of court to surrender into the hands of the lord or lady, lords or ladies for the time being of the same manor, by the hands and acceptance of the steward or deputy steward, by the rod, according to the custom of the said manor, ALL THOSE three cottages or tenements, situate and being at — (which said premises are part of the hereditaments to which I was admitted tenant at a court held for the said manor on the — day of —), and the reversion and reversions, remainder and remainders thereof, and all my estate and interest therein, TO THE USE of E. F. of, &c., his heirs and assigns for ever, according to the custom of the said manor: AND FURTHER, for me the said A. B., and in my name to do and execute all such acts, matters, and things as shall be needful or expedient for making such surrender as aforesaid, and for procuring the said E. F., his heirs or assigns, to be admitted tenant or tenants of the said copyhold premises, and as fully and effectually to all intents and purposes as I myself could or might do if I were personally present: AND I HEREBY agree to ratify and confirm all and whatsoever the said C. D. shall lawfully do or cause to be done by virtue of these presents.

Attorney to appear at the court and surrender

hereditaments to use of purchaser;

and to do all other necessary acts.

IN WITNESS, &amp;c.

## No. VII.

## POWER of ATTORNEY to Accept Admittance of a COPYHOLD MESSAGE for the PURCHASER.

TO ACCEPT ADMITTANCE OF COPYHOLD FOR PURCHASER.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B. of, &c. (*appointor*), SEND GREETING: WHEREAS by

Recite contract of a

TO ACCEPT  
ADMITTANCE  
OF COPY-  
HOLDS FOR  
PURCHASER.

purchase of  
copyhold  
messuage.  
Desire to  
appoint  
attorney to  
accept  
admittance.

Appoint-  
ment of  
attorney  
accordingly.

an agreement, dated, &c., and made and entered into, &c., I contracted and agreed with Y. Z. of, &c., for the purchase from him of a certain copyhold or customary messuage or tenement, being No. —, and situate, &c., at the price of £—: AND WHEREAS it will be inconvenient for me to be admitted to the said copyhold hereditaments in my own proper person, and I am therefore desirous that C. D. of, &c., shall act as my attorney for this purpose: NOW THESE PRESENTS WITNESS, that for effectuating the aforesaid desire, I, the said A. B., do hereby constitute and appoint the said C. D. my true and lawful attorney, for me and in my name, and either in court or out of court to be admitted tenant to the said copyhold messuage or tenement and hereditaments upon the surrender of the said Y. Z., to hold the same to me, my heirs and assigns, according to the custom of the said manor, at the fines and services heretofore due and of right accustomed: AND WHATSOEVER my said attorney shall do for the purpose of procuring my admittance as aforesaid, I, A. B., do hereby for myself, my heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, to ratify and confirm.

IN WITNESS, &c.

### No. VIII.

RE-ENTER  
AND EXPEL  
TENANT.

#### POWER of ATTORNEY by a Landlord to Re-enter on Premises and EXPEL TENANT from Premises com- prised in a LEASE.

Power by  
landlord to  
attorney to  
re-enter and  
expel  
tenant.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*appointor*), do hereby constitute and appoint C. D. of, &c., and E. F. of, &c., (*attorneys*), and each of them to be my true and lawful attorneys and attorney, at the expense of me, my executors or administrators, into and upon the messuages, lands, and hereditaments situate at, &c., comprised in and demised by a certain indenture, dated the — day of —, and made between me of the one part, and G. H. of the other part, or into and upon any part of the said premises in the name of the whole, to re-enter, and the said G. H., his executors, administrators, and assigns, and all other tenants and occupiers thereof, thereout utterly to expel, remove, and put out,

and for the purpose of obtaining possession of the said premises, to take all such steps and proceedings at law or otherwise, and to do all such matters and things either in my name, or in the names or name of the said attorneys or attorney as in their or his opinion shall seem expedient, and as I myself might lawfully have taken and done; and I hereby declare that either of them the said C. D. and E. F. shall have full authority to act in the premises singly and without the other of them: AND WHATSOEVER the said C. D. and E. F., or either of them shall lawfully do or cause to be done in or about the premises, I, the said A. B., do hereby for myself, my heirs, executors, and administrators, covenant with the said C. D. and E. F., their executors and administrators, to ratify and confirm.

IN WITNESS, &c.

TO RE-ENTER  
AND EXPEL  
TENANT.

#### No. IX.

##### POWER of ATTORNEY to receive a Legacy (a).

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of, &c. (*appointor*), do hereby appoint C. D. of, &c., my true and lawful attorney for me and in my name to receive of and from the executors of the will of G. H., late of, &c., deceased, or other the person or persons liable to pay the same, ALL that legacy of £1000 given and bequeathed to me by the said will (after deducting the legacy duty thereon), and all interest (if any) due and owing in respect thereof, and to give an effectual receipt and discharge for the said legacy and interest to the person or persons paying the same, and also on non-payment of the said legacy and interest, or any part thereof respectively, to institute all such actions and proceedings, and to do all such other acts and things for the purpose of recovering and compelling payment thereof as my said attorney may think fit: AND WHATSOEVER my said attorney shall do in the premises, I hereby agree to ratify and confirm.

IN WITNESS, &c.

TO RECEIVE  
A LEGACY  
CHARGED ON  
LANDS.

Recite will.  
Appoint-  
ment of  
attorneys  
accordingly.

(a) See 22 & 23 Vict. c. 35, sec. 26, *supra*, p. 684, note. Under this enactment the executors may safely pay the legacy to the attorney pursuant to the above power, without requiring evidence that the legatee is living.

## No. X.

TO RECEIVE  
SHARE OF  
RESIDUARY  
ESTATE.

Appoint-  
ment of  
attorney  
to receive  
from exe-  
cutors of  
will the  
appointor's  
share of  
the testa-  
tor's estate,

and to  
settle  
accounts,  
&c.,

to permit  
postpone-  
ment of  
sale and  
conversion,  
to execute  
releases to  
executors  
and trustees.

POWER of ATTORNEY (a) to receive a SHARE of RE-  
SIDUARY ESTATE and to SETTLE ACCOUNTS.

KNOW ALL MEN BY THESE PRESENTS, that I, A. B., of, &c. (*appointor*), do hereby appoint C. D. of, &c., to be my true and lawful attorney, for me and in my name to receive of and from the executors and trustees of the will of my father, G. H., late of, &c., deceased, or other the person or persons liable to pay or account for the same, ALL that my one-third share or other my share under the trusts of the said will of and in the proceeds of the real and residuary personal estate of the said testator, which real and residuary personal estate were by the said will vested in trustees in trust for sale and conversion and division among the testator's children, as in the said will is mentioned, and of and in the rents and annual income of the said real and residuary personal estate, until the sale, conversion, and division thereof, and all other (if any) the moneys payable to me under the said will: AND ALSO to examine, approve, and allow or (at the discretion of my said attorney) to disapprove and disallow all such accounts as shall from time to time be furnished by the said executors and trustees of and concerning the real and personal estate of the said testator, and the application and disposition thereof, and to compound, submit to arbitration, or otherwise settle all or any questions or disputes which may arise in relation to such accounts or to the testator's estate: AND ALSO to permit the said executors and trustees to postpone the sale and conversion of any part of the said real or personal estate, for so long as may be thought desirable: AND ALSO upon the distribution of the said estate and the proceeds thereof to execute for me and in my name to the said executors and trustees such receipts, releases and discharges from all actions, claims and demands, for and in respect of the testator's estate or my share thereof, or any act, deed, and matter, or thing done or omitted to be done by the said executors and trustees, or any of them in relation thereto, as my said attorney shall think fit: AND WHATSOEVER my said attorney shall lawfully do in the premises, I hereby agree to ratify and confirm.

IN WITNESS, &c.

(a) See p. 695, note.

## No. XI.

## POWER of ATTORNEY to execute a DEED of RECONVEYANCE or TRANSFER of MORTGAGE (a).

TO EXECUTE  
RECONVEY-  
ANCE OR  
TRANSFER OF  
MORTGAGE.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, A. B., of, &c. (*appointor*), SEND GREETING: WHEREAS I am the mortgagee under an indenture, dated, &c., and made, &c. (*date and parties*), of certain lands and hereditaments, situate in the parish of —, in the county of —, therein described for securing the payment to me of the sum of £—, with interest thereon: AND WHEREAS I have required payment of the money secured by the said mortgage and it is uncertain whether the said E. F. (*mortgagor*) will pay the same himself or whether he will procure some other person or persons to pay the same in consideration of having a transfer of the said mortgage: NOW I, the said A. B., do hereby appoint C. D. of, &c. (*attorney*), to be my true and lawful attorney for me and in my name to receive of and from the said E. F. or any other person or persons who may pay the same the said principal sum of £—, owing to me upon the security of the said indenture of mortgage, and all interest owing thereon, and to give an effectual receipt for the same: AND ALSO upon such receipt to execute for me and in my name, and as my act or deed, any deed which my said attorney shall approve either for reconveying the hereditaments comprised in the said mortgage to the said E. F., his heirs or assigns, or other the person or persons entitled to the equity of redemption thereof, freed and discharged from the said mortgage, and all moneys owing thereon: OR (if the mortgage shall be paid off by any person or persons who may ask for a transfer thereof) for the purpose of transferring to such person or persons, or his or their nominee or nominees, the said principal sum of £—, and all interest due and to become due thereon, and the benefit of all securities for the same, and also for conveying unto and to the use of such person or persons as aforesaid, or his or their nominee or nominees, his or their heirs or assigns, all and singular the hereditaments comprised in the said mortgage, subject to such

Recital that  
appointor is  
mortgagee,  
and that  
money has  
been called  
in.That it is  
uncertain  
whether  
money will  
be paid off  
by mort-  
gagor, or to  
intended  
transferee.Appoint-  
ment of  
attorney  
to receive  
money,and upon  
receipt to  
execute re-  
conveyance  
or transfer.

(a) This power can easily be adapted to any other description of deed.



TO EXECUTE  
RECONVEY-  
ANCE OR  
TRANSFER OF  
MORTGAGE.

right or equity of redemption as shall be subsisting therein, and any deed, whether of reconveyance or transfer, which may be executed under this power may contain a covenant by me that I have done no act to incumber the said premises : AND WHATSOEVER my said attorney shall do in the premises, I hereby agree to ratify and confirm.

IN WITNESS, &c.

### No. XII.

TO EXECUTE  
DEED SET  
OUT IN  
SCHEDULE.

#### POWER of ATTORNEY to EXECUTE a particular DEED set out in the SCHEDULE.

Recital of  
proposal to  
execute  
deed, of  
which a  
draft is set  
out in  
schedule.

That draft  
has been  
approved by  
appointor's  
solicitor.  
Appoint-  
ment of  
attorney to  
execute  
deed.

Proviso  
authorising  
attorney to  
consent to  
alterations  
in draft.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I A. B. of, &c. (*appointor*), SEND GREETING: WHEREAS a deed of family arrangement is proposed to be made and executed between me and my brothers and sisters, and the trustees of the will of X. Y., late of, &c., in relation to the trust estate held upon the trusts of the said will, and a draft of the proposed deed has been prepared, and a copy thereof is annexed hereto by way of schedule : AND WHEREAS the draft has been approved by my solicitor C. D., of, &c. and is also approved by me: NOW THESE PRESENTS WITNESS, that I, the said A. B., hereby appoint the said C. D. to be my attorney to execute for me and in my name, and as my act and deed, the deed to be engrossed from the draft, a copy whereof is annexed hereto by way of schedule : PROVIDED ALWAYS, AND I AUTHORISE my said attorney (if he shall think fit), to consent to any alterations in the said draft before the engrossment thereof, so as such alterations be not inconsistent with the general purport and effect of the said arrangement as set out in the said draft: AND I DECLARE that the deed which shall be executed by my said attorney in professed exercise of this power shall be deemed to be the deed hereby authorised to be executed by him, notwithstanding any variations therein from the said draft as set out in the schedule hereto, and his execution shall be conclusive evidence that the variations have been approved of by him, and are such as hereby authorised.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

## MISCELLANEOUS DEEDS.

### No. I.

GRANT *on a SALE of ANNUITY to GRANTEE for his own Life, charged upon Lands of GRANTOR, with Powers of DISTRESS and ENTRY; DEMISE of the same LANDS to TRUSTEES, by way of further security; COVENANT by GRANTOR to pay ANNUITY (a).*

GRANT OF  
ANNUITY  
FOR LIFE OF  
GRANTEE  
SECURED ON  
FREEHOLDS  
OF GRANTOR.

THIS INDENTURE, made the — day of —, BETWEEN Parties.

A. B. of, &c. (*grantor*), of the first part, C. D. of, &c. (*grantee*), of the second part, and E. F., of, &c., and G. H. of, &c. (*trustees*), of the third part; WHEREAS the said A. B. hath agreed with the said C. D. for the sale to him of an annuity or yearly sum of £—, for the life of the said C. D., and to be secured

Recite  
contract for  
sale of  
annuity.

(a) By the 17 & 18 Vict. c. 90, the 53 Geo. 3, c. 141, and the 3 Geo. 4, c. 92 (which required the enrolment of grants of annuities), are repealed, and by the 12th section of the 18 & 19 Vict. c. 15, it is provided that any annuity or rent-charge granted after the passing of the Act, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, shall not affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name, and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the date of the deed, bond, instrument, of assurance whereby the annuity or rent-charge is granted, and the annual sum or sums to be paid shall be left with the Senior Master of the Court of Common Pleas at Westminster, who shall forthwith enter the particulars aforesaid in a book in alphabetical order by the name of the person whose estate is intended to be affected by the annuity or rent-charge, together with the year and the day of the month when every such memorandum or minute is so left with him, and he shall be entitled for every such entry to the sum of two shillings and sixpence, and all persons shall be at liberty to search the same book, together with the other books or registers in the office, on payment of the sum of one shilling. By the 14th section it is provided that the Act shall not extend to require the registry of annuities or rent-charges *given by will*. See also 23 & 24 Vict. c. 115, as to the entry of satisfaction.

Registration  
of  
annuities  
in the  
Common  
Pleas.

GRANT OF  
ANNUITY  
FOR LIFE OF  
GRANTEE  
SECURED ON  
FREEHOLDS  
OF GRANTOR.

Witnesseth.  
Considera-  
tion.

Grant of  
annuity for  
life of  
grantee.

Chargeable  
upon lands  
of grantor.

Powers of  
distress and  
entry.

in the manner hereinafter mentioned, at the price of £—: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £— to the said A. B. paid by the said C. D., on or before the execution of these presents (*the receipt, &c.*), the said A. B. doth hereby grant unto the said C. D., and his assigns, ONE annuity or yearly sum of £—, during the life of the said C. D., to commence and be computed from the day of the date of these presents, and to be charged upon and issuing and payable out of the hereditaments hereinafter described and intended to be hereby demised, and to be paid by equal half-yearly payments on the — day of — and the — day of — in every year, the first half-yearly payment thereof to be made on the — day of — next: AND THE SAID A. B. doth hereby further grant and covenant to and with the said C. D., THAT IN CASE the said annuity or any part thereof shall at any time or times be in arrear or unpaid for the space of twenty-one days next after the same shall become payable, then and so often as the same shall happen it shall be lawful for the said C. D. or his assigns, to enter into and distrain upon all or any part of the said hereditaments hereby charged, and to dispose of the distress and distresses then and there found according to law as landlords may for rent reserved upon leases for years, to the intent that thereby or otherwise the said annuity and every part thereof so in arrear and unpaid, and all costs and charges occasioned by reason of the non-payment thereof, shall be fully paid and satisfied: AND ALSO THAT IN CASE the said annuity, or any part thereof, shall at any time or times be in arrear and unpaid for the space of forty days next after the same shall become payable, then and so often as the same shall happen (although the same shall not have been legally demanded), it shall be lawful for the said C. D. or his assigns to enter into and upon, and to hold all or any part of the said hereditaments, and to receive and take the rents and profits thereof, for his and their own use, until he or they shall thereby or otherwise be fully paid and satisfied the said annuity, and the arrears due at the time of such entry, or afterwards to become due during his or their being in possession of the said hereditaments, together with all costs, charges, and expenses which he or they shall sustain by reason of the non-payment thereof, such possession when taken to be without impeachment

of waste: AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration aforesaid, he the said A. B. doth hereby grant and demise unto the said E. F. and G. H., their executors, administrators, and assigns, ALL, &c. (*parcels, general words, and all the estate, &c.*), TO HOLD the same unto the said E. F. and G. H., their executors, administrators, and assigns, for the term of ninety years, computed from the day of the date of these presents, UPON TRUST that if the said annuity, or any part thereof, shall be in arrear and unpaid for the space of sixty days next after the same shall become payable, then and in such case, and so often as the same shall happen, the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall with and out of the rents and profits of the said hereditaments and premises, or by mortgage or demise thereof, or any part thereof, for the whole or any part of the said term, or by any other reasonable ways and means, raise and pay to the said C. D. or his assigns the said annuity, and all arrears thereof, and all costs, charges, and expenses whatsoever which the said C. D. or his assigns or the said trustees or trustee shall sustain by reason of the non-payment thereof, and subject to the trust aforesaid shall permit the rents and profits of the same hereditaments and premises to be received by the said A. B. his heirs and assigns: AND the said A. B. doth hereby covenant with the said C. D. that he, the said A. B., his heirs, executors, or administrators, will pay to the said C. D. and his assigns, during his life, the said annuity or yearly sum of £—— on the days and in the manner aforesaid: AND THE SAID A. B. doth hereby covenant with the said E. F. and G. H., their executors, administrators, and assigns, THAT the said A. B. now hath good right to grant and demise the said hereditaments and premises in manner aforesaid: AND FURTHER THAT he the said A. B., and all other persons having or lawfully or equitably claiming any estate or interest in the said hereditaments and premises or any part thereof, shall and will, from time to time, and at all times hereafter, at his or their own cost, do and execute, or cause to be done and executed, such acts, deeds, and things for further and more perfectly demising the said hereditaments and premises unto the said E. F. and G. H., their executors, administrators, and assigns for the term and in manner aforesaid as by them shall be reasonably required.

IN WITNESS, &c.

GRANT OF  
ANNUITY  
FOR LIFE OF  
GRANTEE  
SECURED ON  
FREEHOLDS  
OF GRANTOR.

Demise of  
grantor's  
lands -  
to trustees  
for ninety  
years.

Upon trust  
for securing  
annuity out  
of rents or  
by mort-  
gage.

Covenants  
by grantor  
to pay  
annuity

for right to  
charge and  
demise  
heredita-  
ments;  
and for  
further  
assurance.

## No. II.

GRANT OF  
ANNUITY  
SECURED ON  
LIFE  
INTEREST IN  
STOCK.

GRANT of an ANNUITY for the JOINT LIVES of the  
GRANTOR and GRANTEE, secured by an ASSIGN-  
MENT of a LIFE INTEREST in STOCK.

Parties.

Witnessing  
part.

Grant of  
annuity.

Direction  
to trustees  
to pay  
annuity.

Grant of  
annuity not  
to prejudice  
power of  
varying  
investments  
contained in  
settlement.

THIS INDENTURE. made, &c., BETWEEN A. B. of, &c. (*grantor*), of the one part, and C. B. of, &c. (the mother of the said A. B.) (*grantee*), of the other part (*Recite indenture under which A. B. is entitled to a life interest in a sum of £— £3 per Cent. Consolidated Bank Annuities standing in names of E. F. and G. H. as trustees*): AND WHEREAS the said A. B. hath agreed to grant and assign to the said C. B. an annuity of £— during their joint lives charged upon the life interest of the said A. B. in the said trust fund in the manner hereinafter expressed: NOW THIS INDENTURE WITNESSETH that, in pursuance of the aforesaid agreement, and in consideration of the natural love and affection of the said A. B. for the said C. B., and for divers other good causes and considerations, he the said A. B. doth hereby grant and assign unto the said C. D. and her assigns, ONE annuity or yearly sum of £— during the joint lives of the said A. B. and C. D., to commence from the day of the date of these presents, and to be charged upon and issuing and payable out of the dividends, interest, and annual produce of the said sum of £— £3 per Cent. Consolidated Bank Annuities now standing in the names of the said E. F. and G. H. in the books of the Governor and Company of the Bank of England as hereinbefore is mentioned, or the stocks, funds, and securities for the time being representing the same, to be paid by equal half-yearly payments, the first of such payment to be made on the — day of — next: AND THE SAID A. B. doth hereby direct the said E. F. and G. H., and the survivor of them, or other the trustees or trustee for the time being of the said recited indenture of settlement, to pay the said annuity out of the said dividends, interest, and annual produce in manner aforesaid: PROVIDED ALWAYS, that the grant of the aforesaid annuity shall not prevent or interfere with the exercise of the power contained in the said indenture of settlement of varying the investments of the said sum of

£—— £3 per Cent. Consolidated Bank Annuities, or the stocks, funds, and securities for the time being representing the same, or any part thereof, but such power may be exercised in all respects as if these presents had not been executed : PROVIDED ALSO, that the interest, dividends, and annual produce hereinbefore charged with the said annuity, shall be and remain the sole fund charged therewith, and the said A. B. shall not be personally liable for the payment thereof.

GRANT OF ANNUITY SECURED ON LIFE INTEREST IN STOCK.

Grantor not to be personally liable for annuity.

IN WITNESS, &c.

No. III.

WARRANT of ATTORNEY to confess JUDGMENT (a).

WARRANT OF ATTORNEY TO CONFESS JUDGMENT.

To E. F. of, &c., and G. H. of, &c., Solicitors of her Majesty's Supreme Court of Judicature, jointly and severally, or to any other solicitor of the same court. THESE ARE TO DESIRE AND AUTHORISE you the solicitors above named, or either of you or any other solicitor of the said Court, to appear for me, A. B. of, &c., in the High Court of Justice (Queen's Bench division), in an action of debt for £—— for money lent, at the suit of C. D. of, &c., and thereupon to confess the said action, or suffer a judgment to pass against me in the same action, and to be thereupon forthwith entered up against me of record of the same court for the sum of £—— and costs of suit : and I, the said A. B., do hereby further authorise and empower you or any one of you, after the said judgment shall be entered up as aforesaid, for me and in my name, and as my act and deed, to sign seal, and execute a good and sufficient release in the law to the said C. D., his heirs, executors, and administrators, of all and all manner of errors, defects and imperfections whatsoever, had, made, committed, done, or suffered, or to be had, made committed, done, or suffered in, about, or concerning the aforesaid judgment, or the proceedings relating thereto : And whatsoever you, or any one of you, shall do or cause to be done in the premises, or any of them, this shall be to you and to every of you a sufficient warrant or authority.

Warrant of attorney to confess judgment

(a) A warrant of attorney to confess and enter up a judgment given as security for the payment or repayment of money, or for the transfer or re-transfer of stock, is liable to the same stamp duty as a mortgage for the same purpose. A warrant of attorney of any other kind is liable to a stamp duty of 10s. (33 & 34 Vict. c. 97.)

WARRANT OF  
ATTORNEY  
TO CONFESS  
JUDGMENT.

IN WITNESS whereof I have hereunto set my hand and seal  
the — day of —, in the year of our Lord 18—.

A. B.

SIGNED, sealed, and delivered by the said  
A. B. in the presence of L. M. of—, in the  
county of —, one of the solicitors of her  
Majesty's Supreme Court of Judicature, ex-  
pressly named by the said A. B. as his soli-  
citor, and attending at his request to inform  
him of the nature and effect of the above  
instrument, and I, the said L. M., declare  
that I have informed the said A. B. of the  
nature and effect of the said instrument before  
his execution thereof, and that as his soli-  
citor I subscribe my name as a witness to the  
due execution hereof (b).

L. M. [*Signature of defendant's attorney.*]

(b) By the Debtors Act, 1869 (32 & 33 Vict. c. 62), it is provided that a warrant of attorney to confess judgment in any personal action or *cognovit actionem* given by any person shall not be of any force unless there shall be present some attorney of one of the superior courts on behalf of such person expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or *cognovit* before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney (sect. 24); and a warrant of attorney not executed in manner aforesaid shall not be rendered valid by proof that the person executing the same did in fact understand the nature and effect thereof, or was fully informed of the same (sect. 25). And sect. 26 provides that where in an action a warrant of attorney to confess judgment is given, and the same, or a true copy thereof, is not filed in the Queen's Bench within twenty-one days after the execution thereof, as required by 3 Geo. 4, cap. 39, the same shall be deemed fraudulent and void, and if any such warrant of attorney was given subject to any defeazance or condition, such defeazance or condition shall be written on the same paper or parchment with the warrant before the filing thereof, otherwise the warrant shall be void. The above enactments are substituted for similar clauses in Acts of Parliament repealed by the Act 32 & 33 Vict. c. 83.

By the Judicature Act, 1873, sect. 87, all persons admitted as solicitors, attorneys, or proctors are to be called solicitors of the Supreme Court of Judicature.

## No. IV.

DEFEAZANCE *to be indorsed on the* WARRANT of ATTORNEY *contained in the* LAST PRECEDENT, *given to* secure the payment of £—— and Interest.

DEFEAZANCE  
ON  
WARRANT OF  
ATTORNEY.

WHEREAS by an indenture bearing even date with the within-written warrant of attorney, and made between (*parties*), in consideration of the sum of £1000 paid by the said C. D. to the said A. B., the said A. B. has assigned a policy of assurance on his life for the sum of £——, effected in the —— Assurance Office, and numbered ——, and the moneys thereby assured, unto the said C. D., his executors, administrators, and assigns, by way of security for the payment of the sum of £1000, with interest for the same after the rate of £5 per cent. per annum, on the —— day of —— next: AND the indenture now in recital contains covenants by the said A. B. for the payment of the said sum of £1000, and the interest thereof, and to keep on foot the said policy, and to effect a new policy in case the subsisting policy shall become void, and to repay to the said C. D., his executors, administrators, or assigns, all moneys (if any) paid by him or them in or about the keeping on foot the said policy, or in effecting or keeping on foot any such new policy as aforesaid: NOW BE IT REMEMBERED, that the within-written warrant of attorney is given as a collateral security for the payment of the principal money and interest secured by the said indenture: AND it is hereby declared that no execution shall be issued or taken out upon the judgment or judgments to be confessed in pursuance or by virtue of the said warrant of attorney, unless and until default shall be made in payment of the principal money and interest secured by the said indenture, or some part thereof respectively, contrary to the true intent and meaning of the said indenture, AND that in case default shall be made in payment of the said principal money and interest, or any part thereof respectively, contrary to the true intent and meaning of the said indenture, then and in such case it shall be lawful for the said C. D., his executors, administrators, or assigns, to sue out such execution or executions, or other process, upon or by virtue of the said judgment or judgments, or any of them, as he

Recite  
mortgage  
of policy  
to secure  
£— and  
interest.

Defeazance.



DEFEAZANCE  
ON  
WARRANT OF  
ATTORNEY.

or they shall think fit or be advised for the recovery of such principal money and interest respectively, and all costs, charges, and expenses which he or they shall sustain or be put unto by reason of the non-payment of such principal money and interest respectively, or any part thereof: AND also that after the full payment to the said C. D., his executors, administrators, or assigns, of the said principal money and interest, and of all such costs, charges, and expenses as aforesaid, he the said C. D., his executors, administrators, and assigns, shall and will, on the request and at the cost and charges of the said A. B., his heirs, executors, or administrators, acknowledge satisfaction of the said judgment or judgments upon the record or records thereof, in due form of law, and do all further or other acts, matters, or things which may be reasonably required for releasing and extinguishing all right and remedy upon the said judgment or judgments, and all executions thereupon respectively, so that for doing thereof the said C. D., his executors, administrators, or assigns, be not compelled or compellable to travel from his or their then usual place or places of abode.

IN WITNESS, &c.

### No. V.

WARRANT TO  
ENTER  
UP SATISFAC-  
TION OF  
JUDGMENT.

### WARRANT of ATTORNEY to enter up Satisfaction of JUDGMENT.

That judg-  
ment was  
entered up.

That  
moneys  
secured by  
judgment  
had been  
paid.  
Power to  
enter up  
satisfaction.

To A. B. of, &c., and C. D., of, &c., Solicitors of the Supreme Court of Judicature jointly and severally: WHEREAS (*here recite warrant of attorney by E. F. to G. H. to appear for E. F. in an action for debt for £— for money borrowed at the suit of L. M. of, &c., and to confess judgment against E. F. for the sum of £—, and costs of suit*): AND WHEREAS, pursuant to the said recited warrant of attorney, on the — day of —, a judgment was duly entered up at the suit of the said L. M. against the said E. F. for the sum of £— and costs of suit: AND WHEREAS the said sum of £— and all interest thereon, and all other moneys secured by the said judgment, have been duly paid by the said L. M., as he doth hereby admit: NOW THESE ARE TO DESIRE you, the attorneys above named, or either of you, forthwith to enter up upon record of the said

Court satisfaction of the said judgment; AND FOR whatsoever you or either of you, shall do in the premises, this shall be a sufficient warrant or authority.

WARRANT TO  
ENTER  
UP SATISFAC-  
TION OF  
JUDGMENT.

IN WITNESS, &c.

## No. VI.

COMPOSITION DEED *under Bankruptcy Act, 1869*; COMPOSITION  
DEBTOR and a SURETY covenant to pay TEN SHIL- WITH  
LINGS *in the POUND by* INSTALMENTS (a). CREDITORS.

THIS INDENTURE, made the — day of —, 18—, BE- Parties.  
TWEEN A. B. of, &c. (*debtor*), of the first part, C. D. of, &c.  
(*surety*), of the second part, and E. F. of, &c. (*trustee*), of the  
third part: WHEREAS the said A. B., being unable to pay his  
debts, filed a petition for liquidation by arrangement or compo- That debtor  
sition in the County Court of — holden at — on the — filed peti-  
day of — last: AND WHEREAS at a general meeting of the tion for  
creditors of the said A. B., duly convened, and held at the office liquidation  
of Mr. — at —, it was resolved by the statutory majority by arrange-  
of creditors assembled at such meeting—1st, That a composition ment or  
of ten shillings in the pound should be accepted in satisfac- composi-  
tion of the debts due to the creditors from the said A. B.; 2ndly, tion.  
that such composition be payable by three equal instalments, Resolution  
the first within seven days from the registration of the extra- at first  
ordinary resolution, the second at the expiration of three calen- general  
dar months from such registration, and the third at the expira- meeting of  
tion of six calendar months from such registration; 3rdly, that creditors  
the security of C. D. of, &c., be accepted for the payment of the to accept  
whole of the instalments of the said composition; 4thly, that composition.  
E. F. of, &c., be appointed trustee for the receipt and distribu-  
tion of the said composition; 5thly, that the terms of the said  
composition be embodied in a deed to be prepared by — and  
approved by — on behalf of the creditors, such deed to con-  
tain proper covenants for carrying into effect the said resolution,  
and for releasing the debtor (b): AND WHEREAS the said resolu- Filing of  
resolution;

(a) See the Bankruptcy Act, 1869, sections 126, 127. In the above precedent it is supposed that the creditors are satisfied to accept the personal security of the debtor and a surety, without a *cessio bonorum*.

(b) The following variation is suggested in the resolution as to the

COMPOSITION  
WITH  
CREDITORS.

confirma-  
tion thereof  
at second  
meeting.

That this  
deed has  
been pre-  
pared and  
approved.

Witnessing  
part.

1. Joint and  
several  
covenant by  
debtor, and  
surety to  
pay—  
1st. Pre-  
ferential  
debts in  
full ;

2ndly. A  
composition  
of 10s. in  
the £ on  
other debts  
by instal-  
ments ;

3rdly. All  
costs.

tion was duly filed, with the statement of the debtor's affairs and of the proofs and proxies produced at the said meeting ; and at a second general meeting, duly convened and held at the office aforesaid on the — day of — last, the said resolution was duly confirmed by the statutory majority of creditors assembled thereat : [AND WHEREAS these presents have been prepared by the said — and approved of by the said — as a proper deed for carrying into effect the said resolution and for releasing the said A. B. (a)].

NOW THIS INDENTURE WITNESSETH AND DECLARES as follows :—

1. THE said A. B. and C. D. do hereby jointly and severally covenant with the said E. F. (hereinafter called "the trustee") that they the said A. B. and C. D., or one of them, their or one of their heirs, executors, or administrators, will pay to the trustee, within seven days from the registration of the aforesaid resolution, such a sum of money as shall be equal to the amount of those debts of the said A. B. which, under the 32nd section of the Bankruptcy Act, 1869, are given a priority over other debts, to be applied by the trustee in payment of such preferential debts : AND ALSO WILL pay to the trustee such a sum of money as shall be equal to the amount of ten shillings in the pound upon all the debts of the said A. B. (other than such preferential debts as aforesaid), by three equal instalments, at the times following (that is to say) the first of such instalments within seven days from the registration of the said resolution, and the second and third instalments at the expiration of three calendar months and six calendar months respectively from the registration of the said resolution, to the intent that the sum so paid to the trustee as last aforesaid shall be distributed among the creditors of the said A. B., *pari passu* : AND ALSO WILL, on demand of the trustee, pay all costs, charges, and expenses incurred, or to be incurred in or relating to the aforesaid proceedings for liquidation or composition, including the costs of and incident to these presents and the carrying the same into effect.

deed :—"That the deed, a draft of which was submitted to the said meeting and signed by the chairman (meaning this present deed), be approved of as a proper deed for carrying into effect the said resolution, and for releasing the debtor."

(a) This will be omitted if the variation above suggested in the note is adopted.

2. FROM and after payment of the said composition and of all other moneys payable under Article 1, at the times and in the manner aforesaid, the said A. B. shall stand and be released from all debts owing to creditors bound by the provisions of this composition: AND in the meantime, and pending the payment of the said compensation, no proceeding shall be taken by any creditor against the said A. B. in respect of any such debt as aforesaid.

COMPOSITION  
WITH  
CREDITORS.

2. Release  
of debtor on  
payment of  
compo-  
sition.

3. ALL debts proveable in bankruptcy shall be deemed debts for the purpose of this composition, and the composition shall be payable in respect of such amount as would have been so proveable.

3. What  
shall be  
deemed  
debts.

4. NOTHING herein contained shall prejudice any right or remedy which any creditor may have against any other person than the said A. B., nor prejudice or affect any mortgage, lien, or security, which any creditor may have on any property or effects of the said A. B. or of any other person, but a creditor holding any such mortgage, lien, or security shall be entitled to receive the said composition in respect only of the amount of the debt owing to him after realising or giving credit for the value of such mortgage, lien, or security in like manner as he would have had to realise or give credit for the same in order to obtain a dividend in case of bankruptcy.

4. Creditors  
to retain  
their rights  
against  
other  
parties  
and all  
securities,  
but to be  
entitled to  
dividend in  
respect only  
of debt  
remaining  
after giving  
credit for  
value of  
security.

5. If default shall be made in payment of any instalment of the said composition, or any part thereof, or of any other moneys payable under Article 1 at the time hereby appointed for payment thereof, then and in such case it shall be lawful for the trustee, by notice in writing, under his hand, to be sent by post to the usual or last known place of abode in England of the said A. B. or of the said C. D., to declare these presents void, and the same shall be thenceforth void accordingly.

5. Power of  
trustee to  
make void  
this deed in  
case of  
default in  
payment of  
any instal-  
ment of the  
com-  
position.

6. THE trustee shall have the like power of admitting and rejecting proofs of debts and claims as a trustee under a liquidation by arrangement, AND the Bankruptcy Rules, Nos. 311 to 314 inclusive, shall be deemed to be incorporated in these presents, and shall for this purpose be read and construed as if the same had been expressly made applicable to a composition as well as to a liquidation by arrangement.

6. Trustee  
to have  
power of  
admitting  
and reject-  
ing proofs,  
and certain  
of the  
Bankruptcy  
Rules, 1870,  
to be in-  
corporated.

7. IF the trustee, or any future trustee of these presents shall die or desire to be discharged from, or become unfit or incapable to act in the trusts thereof, a new trustee may be

7. Provision  
for appoint-  
ment of new  
trustee.

COMPOSITION  
WITH  
CREDITORS.

appointed in his place by the majority in value of the creditors present or represented at a meeting duly summoned for that purpose, in like manner as a new trustee may be appointed in a liquidation by arrangement under the Bankruptcy Rules, AND every such new trustee shall have the like powers and duties as the trustee for whom he shall be substituted.

IN WITNESS, &c.

## NO. VII.

APPOINT-  
MENT UNDER  
POWER TO  
CHILDREN

APPOINTMENT *by PARENTS under a POWER in their MARRIAGE SETTLEMENT among their CHILDREN equally, some of such children being of age, and some under age, with POWER of REVOCATION, except as to the share of a SON about to marry (a).*

Re:ite  
settlment.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., and C. his wife (*appointors*), SEND GREETING. WHEREAS, by an indenture, dated the — day of —, 18—,

Construc-  
tion of  
powers of  
appoint-  
ment  
amongst  
children.

(a) A power to appoint to children in such proportions as the donee shall direct is effectually exercised by an appointment of a limited interest to one, and of the *corpus* of the fund to another (*Alexander v. Alexander*, 2 Ves. Senr. 640; *Bristowe v. Ward*, 2 Ves. 336). So a general power to appoint a fund amongst the children in such manner as the donee shall direct, or to charge real estate with a sum for portions of children, authorises an appointment to trustees in trust to pay the income or rents to a daughter for her separate use (*Alexander v. Alexander*, 2 Ves. Senr. 640; *Maddison v. Andrew*, 1 Ves. Senr. 59; *Ratliffe v. Hampson*, 1 Jur. N. S. 1104; *Thornton v. Bright*, 2 My. & Cr. 230; *Dickinson v. Mort*, 8 Ha. 178). But if there is a restraint on anticipation and the daughter was unborn at the date of the creation of the power, the Court will reject the words creating such restraint, as infringing the rule against perpetuities, and uphold the appointment in other respects (*Fry v. Capper*, 1 Kay, 170; *Re Teague's Settlement*, L. R. 10 Eq. 564; *In re Cunynghame's Settlement*, *ib.*, 11 Eq. 324).

Under the ordinary power of appointment among children, an appointment may be made to such uses, or upon such trusts as a child, being an object of the power, shall by deed or will (and if the child was born at the time of the creation of the power, but not otherwise, as such child shall by will alone) appoint (*Jebb v. Tugwell*, 7 De G. Mac. & Gor. 668; *Phipson v. Turner*, 9 Sim. 227; *Morgan v. Gronow*, L. R. 16 Eq. 1).

Appoint-  
ment may  
be made to  
trustee for  
object;

Again, under such a power the fund may be appointed to trustees in trust for the objects of the power (*Trollope v. Linton*, 1 Sim. & St. 477); and real estate may be appointed to trustees upon trust to sell and divide the proceeds amongst the objects (*Roberts v. Dixall*, 2 Eq. Cas. Abr. 668, pl. 19; *Long v. Long*, 5 Ves. 445; *Kenworthy v. Bate*, 6 Ves. 793; *Fowler v. Cohn*, 21 Beav. 360; *Cowx v. Foster*, 1 J. & H. 30).

or, by  
direction of  
object, to

Again, under such a power, the fund may by the direction of a child, either in contemplation of or subsequently to marriage, be appointed in

and made between the said A. B. of the first part, the said C. B. (then C. D.) of the second part, and E. F., G. H., and I. K. of the third part (being the settlement made in consideration of the marriage then intended, and which was shortly

APPOINTMENT UNDER POWER TO CHILDREN.

favour of his or her issue, or to the trustees of his or her settlement. Such an arrangement is regarded first as an appointment and then as a settlement by the object of the power (*Thompson v. Simpson*, 1 Dru. & War. 459; see also *White v. St. Barbe*, 1 V. & B. 399; *Sug. Pow.* 670; *Limbard v. Grote*, 1 My. & K. 1; *Morgan v. Gronow*, L. R. 16 Eq. 1). And an appointment of this kind made on the marriage of an infant daughter by the direction of her intended husband, has been held good (*Fitzroy v. Duke of Richmond*, 27 Beav. 190).

persons who are not objects.

In *Wright v. Goff* (22 Beav. 207), a tenant for life had a power of appointing a fund amongst her children. A married woman was the only object of the power, and an arrangement was entered into between the tenant for life and the married woman and her husband, whereby the fund was appointed to her and then re-settled, giving an interest to her children and to a stranger. The husband survived, and the transaction was held to be binding on him.

In exercising a power of appointment among children or other objects, it must be borne in mind that the substantial motive of the appointment must be the benefit of the objects of the power, and that an appointment made to such objects with a view not to their exclusive benefit, but for the benefit either wholly or partially of the donee of the power, or any other person, is void, as being what is technically called a fraud on the power.

As to fraudulent exercise of powers.

In *Hitchinbroke v. Seymour* (1 B. C. C. 395), lands were settled in strict settlement with a limitation of a term to trustees, to raise either in the lifetime of the tenant for life, if he should so direct, or after his decease, portions for his younger children to be paid at such time as the tenant for life should direct. The tenant for life directed the trustees to raise the sum for an only daughter, being fourteen years of age, immediately. The daughter died shortly afterwards, and then the father claimed the sum as her administrator; but the Court held that this was a bad execution of the power. The judgment, however, seems to have proceeded not on the ground that the appointment was made fraudulently, with a view to the donee's benefit, but on the ground that according to the scope and intent of the settlement, the power could not be executed until the money was actually wanted. In *Fearon v. Desbrisay* (14 Beav. 635), personal estate was settled in trust for A. for life, and after his decease, for his children, at such ages, &c., as he should appoint, and in default of appointment, for the children equally, at twenty-one, with a power of maintenance, and a gift over, in case no child should become absolutely entitled. A. having a child eight months old, and another *en ventre sa mere*, appointed the fund to all his children living at his decease. One of the children survived A. but died an infant, and it was held that the appointment was good, and that the fund passed to the child's mother as administratrix. It will be seen that in this case the donee of the power could gain no personal benefit from the mode in which he exercised it, and there was no evidence to show that the appointment was not made *bond fide*. In *Beere v. Hoffmister* (23 Beav. 103), a joint power of appointment amongst children in the usual form was exercised by the husband and wife in favour of an only daughter, who was four years old. The daughter was in good health at the time of the appointment, but died shortly afterwards, whereby the fund passed to her father as her administrator. It was held that the appointment was good; but in giving judgment the M. R. observed that if the father could have made the appointment available for raising money, and had done so, it

Appointments in favour of infant children, who die soon afterwards how far good.

APPOINTMENT UNDER POWER TO CHILDREN.

afterwards solemnised, between the said A. B. and the said C. D.), it was agreed and declared that the said E. F., G. H., and I. K., their executors, administrators, and assigns, should stand possessed of certain trust funds therein particularly men-

would have materially altered his view of the case. On the other hand, in *Wellesley v. Mornington* (2 K. & J. 143), an appointment was made to an only son, who was then in a state of disease from which he died within a year, and the Court held upon all the circumstances of the case as proved by the evidence, that the appointment was made by the father with a view to benefit himself, and was therefore void (see also *Gee v. Gurney*, 2 Coll. 486; *Salmon v. Gibbs*, 3 De G. & Sm. 343).

The result of the above cases seems to be, that an appointment to a child, however young, is not in itself necessarily fraudulent, though the effect may be to give the whole fund to the donee of the power as administrator, but that such an appointment will be held void, if from the facts of the case, as *e.g.*, from the child being in bad health at the time, and likely to die soon, it seems to the Court that the intention of the appointor was to benefit himself and not the appointee.

Appointment with a view to benefit strangers.

It is equally a fraud on the power if the appointment is made with a view to benefit a stranger, as for instance, upon a secret understanding that the appointee shall re-assign the whole or part of the fund to a stranger (*Daubeney v. Cockburn*, 1 Mer. 626). In *Birley v. Birley* (25 Beav. 299), an appointment was made to two children, who a year afterwards settled the appointed fund on persons who were not objects of the power, the deed containing a recital that when the appointment was made it was understood that the appointees should consider themselves as possessed of the funds upon the trust expressed in the settlement. The appointment was held void. So also in a case where the donee of a power to appoint amongst children, executed an appointment in favour of two of her children, and such appointment was made on a previous understanding that they should resettle the property appointed, firstly for the benefit of themselves, and finally for persons not objects of the power, the appointment was held to be bad (*Pryor v. Pryor*, 10 Jur. N. S. 603).

If the motive or object of the appointment is to benefit a stranger, it makes no difference that the appointee may be ignorant of such motive or object. Thus, where a married woman, having a power of appointment among her children, appointed the fund by will to her eldest daughter in order that she might thereout benefit her father (the testatrix's husband), it being arranged between the testatrix and her husband that after the death of the former the latter should inform the appointee of the object of the appointment, leaving it in her discretion to carry out her mother's wishes, the appointment was held bad (*In re Marsden's Trusts*, 4 Drew. 594).

In a late case, certain appointments made by a father with a view to prevent the marriage contemplated by one of his daughters, and of which he disapproved, were held to be frauds on the power and void (*Topham v. Duke of Portland*, 1 De G. J. & S. 517; 11 H. L. C. 32; L. R. 5 C. A. 40).

Suspicion not sufficient to invalidate appointment.

But a mere suspicion that the appointor's motive was to benefit himself or others is not sufficient to invalidate the appointment. Thus, in *McQueen v. Farquhar* (11 Ves. 467), a tenant for life entered into a contract for sale, but finding that he could not make a good title without exercising a power reserved to him of appointing the estate among all or any of his children, he exercised the power in favour of his eldest son in fee. Then the father and mother (who were entitled respectively to life estates), as well as the son, conveyed the estate to the purchaser in consideration of £8000 paid to the father, mother, and son; it was held that the power was well executed, and that the purchaser must take the title. Lord Eldon ob-

tioned, UPON the trusts therein declared concerning the same during the lives of the said A. B. and C. D., and after the decease of the survivor of them the said A. B. and C. D., IN trust for, &c. (*set out fully the trust for issue as husband and wife should jointly appoint*): AND WHEREAS the said I. K. having died, L. M. of, &c., was, by an indenture dated the — day of —, 18—, indorsed on the said indenture of settlement, appointed to be a trustee of the said indenture of settlement in

APPOINTMENT UNDER POWER TO CHILDREN.

Appointment of a new trustee.

served there was nothing to show that the son was not to receive a due proportion of the money when the contract was afterwards executed by the deed. (See also *Green v. Pulsford*, 2 Beav. 70; *Cockcroft v. Sutcliffe*, 25 L. J. Ch. 313; *Hamilton v. Kirwan*, 2 Jo. & Lat. 393).

And, if the appointment is made with a view to secure a benefit to all the objects of the power, the appointment is not bad, although the donee may to some extent participate in such benefit. As where an appointment was made to one of the objects, and the appointor and appointee then executed a deed to enable building leases to be granted, there being no power to grant building leases in the original settlement, and subject thereto the property was re-limited substantially to the old uses, the appointment was held valid (*In re Huish's Charity*, L. R. 10 Eq. 5).

Nor does it render an appointment bad that there is a contemporaneous arrangement with the appointees, provided that their substantial interests in the property are not thereby diminished. Therefore, where a tenant for life, with a power of selection amongst his children, had received of the trustees part of the trust moneys in breach of trust, and afterwards appointed to his daughters, in exclusion of his son, this money, which had been advanced to him, and a sum of £500, and contemporaneously with the appointment the daughters exchanged the sums so appointed for an estate of the father; the transaction was supported, inasmuch as the estate was not proved to be of less value than the amount given in exchange (*Askham v. Barker*, 17 Beav. 37).

Contemporaneous arrangement.

In a case where, on the marriage of a daughter under age, the father made an appointment to her, and by the settlement the appointed money, and also a further sum secured by the father's bond, was settled on the usual trusts for the daughter and her husband, and the issue of the marriage, with an ultimate trust in default of issue for the father, the appointment was held good, on the ground that all that the father took was the husband's marital right, the daughter not being bound. A similar appointment and settlement in the case of another daughter who was of age, was upheld by James, V.-C., on the ground that the father gave a sufficient consideration for the reversionary interest, but the Lord Chancellor on appeal thought the transaction of doubtful validity (*Cooper v. Cooper*, L. R. 8 Eq. 312; 5 C. A. 203).

Under a power of distribution amongst the children, the appointment of one share corruptly does not invalidate the appointment as to the remaining shares (*Rowley v. Rowley*, Kay, 242).

Where a power is given to appoint among several objects in such shares as the donee may think fit, but he is not expressly authorized to exclude any one of the objects, it was necessary until lately to give some share, however small, to every object; and if one were excluded the appointment was bad. But by the Act 37 & 38 Vict. c. 37, it is enacted that no appointment to be made after the passing of the Act of any property among several objects shall be invalid at law or in equity on the ground that any object of such power has been altogether excluded, subject to a proviso that the Act shall not apply where there is an express provision declaring the amount from which no object shall be excluded.

Exclusive appointment may now be made.



APPOINTMENT UNDER POWER TO CHILDREN.

Present state of trust funds.

That there are issue six children, three of age, and three under age, and one about to marry.

Witnessing part.

Parents in exercise of power,

appoint trust funds (after decease of survivor of them) to all their children equally. Shares of those now of age to vest immediately, shares of infant sons to vest at twenty-one, and shares of infant daughters to vest at twenty-one or marriage.

Accruer clause in case of death of any child before attaining a vested interest.

Power of revocation by deed.

the place of the said I. K., under a power therein contained for that purpose: AND WHEREAS the investments of the trust funds comprised in the said indenture of settlement have been from time to time varied under a power therein contained for that purpose, and the settled trust funds now consist of, or are represented by, the particulars set forth in the schedule hereunder written: AND WHEREAS there are issue now living of the said A. B. and C. his wife, six children, namely: N. B., O. B., P. B., R. B., S. B., and T. B., of whom the said N. B., O. B., and P. B., have attained the age of twenty-one years, and the said R. B., S. B., and T. B., are under that age, and the said N. B. is about to marry X. Y. of, &c.: AND WHEREAS the said A. B. and C. his wife, are desirous of making such appointment as is hereinafter expressed: NOW THESE PRESENTS WITNESS, that the said A. B. and C. his wife, in exercise of the power for this purpose given to them by the said indenture of settlement as aforesaid, and of all other powers (if any) them hereunto enabling, DO, by this deed, APPOINT that the trustees or trustee for the time being of the said indenture of settlement do and shall, from and after the decease of the survivor of them the said A. B. and C. his wife, stand possessed of all the trust funds and property subject to the trusts of the said indenture of settlement, IN TRUST for the said N. B., O. B., P. B., R. B., S. B., and T. B., in equal shares, the shares of the said N. B., O. B., and P. B. to be vested interests in them immediately upon the execution of these presents, and the shares of the said R. B. and S. B. to be vested interests in them respectively upon their respectively attaining the age of twenty-one years, and the share of the said T. B. to be a vested interest in her upon her attaining the age of twenty-one years or marrying (which shall first happen): PROVIDED ALWAYS, that if any or either of them, the said R. B., S. B., and T. B., shall die before attaining a vested interest in his or her share of the said trust funds and property, then and in every such case, as well the original share of him or her so dying, as also any share accruing to him or her under this clause, shall go and accrue to the said N. B., O. B., and P. B. and the other or others of them the said R. B., S. B., and T. B. in equal shares: PROVIDED ALSO, and it is hereby declared, that it shall be lawful for the said A. B. and C., his wife, at any time during their joint lives, or for the survivor of them during his or her life, by any deed or deeds to revoke either wholly or par-

tially the appointment hereby made, EXCEPT that if the marriage now intended between the said N. B. and X. Y. shall be solemnized within six calendar months from the date hereof, this power of revocation shall not apply to the share of the said N. B. hereunder.

IN WITNESS, &c.

APPOINTMENT UNDER POWER TO CHILDREN.

Except as to share of son about to marry, if marriage takes place,

THE SCHEDULE ABOVE REFERRED TO.

No. VIII.

DEED of COVENANT *not to ERECT any BUILDING on a certain part of COVENANTOR'S PROPERTY, and OBLIGATION in the sum of £—— by way of DAMAGES for due PERFORMANCE of the same.*

COVENANT NOT TO BUILD ON LAND.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B. of, &c. (*covenantor*), of the one part, and C. D. of, &c. (*covenantee*), of the other part: WHEREAS by an indenture dated the —— day of ——, and made between (*parties*), ALL, &c. (*parcels*), and which hereditaments are more particularly delineated and described in the map or plan thereof drawn in the margin of these presents, and are in such map or plan coloured ——, were conveyed unto and to the use of the said A. B., his heirs and assigns for ever: AND WHEREAS the said C. D. is the owner and occupier of the messuage and lands situate on the —— side of the hereditaments comprised in the hereinbefore recited indenture, and which messuage and land are also delineated and described in such map or plan as aforesaid, and are therein coloured ——, and in order to protect himself and his said premises from annoyance or injury by the owner of the hereditaments comprised in the hereinbefore recited indenture, from the erection of buildings or otherwise, he the said C. D. proposed, and had determined to bid for and use his best endeavours to become the purchaser of the same hereditaments: AND WHEREAS it was afterwards arranged between the said C. D. and A. B., that instead of purchasing or attempting to purchase the hereditaments aforesaid, the said C. D. should permit the said A. B. to become the purchaser thereof, and the said C. D. consented to the said arrangement, and to forego his said intention of bidding for and attempting to become the purchaser of the said hereditaments in favour of

Parties.

Recite that covenantee is owner of adjoining hereditaments, and that to protect himself he had determined to bid for hereditaments which were in fact sold to covenantor.

Arrangement that covenantor should purchase the said hereditaments so sold to him, and enter into covenants with covenantee.

COVENANT  
NOT TO  
BUILD ON  
LAND.

Covenantor  
agrees not  
to build on  
lands pur-  
chased by  
him for a  
certain  
period ;

nor carry  
on any  
annoying  
business on  
such pre-  
mises for  
the like  
period.

the said A. B. upon the terms, and in consideration and under an express agreement, that the said A. B. should in the event which happened of his becoming such purchaser as aforesaid, secure to the said C. D. for and during the period hereinafter mentioned, the same or the like protection from annoyance or injury by the erection of buildings on the hereditaments aforesaid, or on the part thereof which on the map or plan aforesaid is coloured —, or by any other ways or means as he the said C. D. might or would have had if he had carried his said intention into effect, and had himself become the purchaser of the said hereditaments : and for effecting the purposes aforesaid, it hath been further agreed that the said A. B. shall enter into the covenant and obligation hereinafter contained : NOW THIS INDENTURE WITNESSETH that, in pursuance of the aforesaid agreement, and in consideration of the premises, he the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that he the said A. B., his heirs or assigns, or any person or persons claiming or deriving title to the hereditaments so purchased by him as aforesaid, or any part thereof, through, under, or in trust for him, shall not, nor will at any time or times during the joint lives of the said C. D. and — his wife, or during the life of the survivor of them, erect, build, or set up, or permit to be erected, built, or set up on any part or parts of the said hereditaments and premises comprised in the hereinbefore recited indenture, and in the said map or plan coloured —, any messuage, edifice, erection or building of any class, character, or description whatsoever, but shall and will at all times during such period as aforesaid, maintain and keep, or cause to be maintained and kept, that part of the said hereditaments aforesaid which in the said map or plan is coloured — in its present open state and condition : AND FURTHER that he said A. B., his heirs and assigns, or any such other person or persons as aforesaid, shall not nor will, at any time during such period as aforesaid, do, or cause or permit to be done, or carried on upon the said last-mentioned hereditaments or any part thereof, any act, matter, or thing, or any trade, business, or employment whatsoever, which shall be, or tend or operate to the annoyance of the said C. D. and his wife, or either of them, or the tenant or tenants, occupier or occupiers, under them, him, or her of the said hereditaments

in the said map or plan coloured —, or any part thereof, or which shall in any manner affect or hinder their, his, or her possession or enjoyment of the said hereditaments, in like manner in all respects, as the said hereditaments are now held and enjoyed by him the said C. D.: AND FOR THE DUE PERFORMANCE by the said A. B., his heirs and assigns, of the covenants hereinbefore contained, and every of them, he the said A. B. doth hereby bind himself, his heirs, executors, administrators, and assigns, unto the said C. D., his executors, administrators, and assigns, in the sum of £—, as or by way of liquidated damages, now mutually assessed by them the said parties hereto, for the non-performance of the aforesaid covenants or agreements, or any or either of them, and not by way of penalty.

COVENANT  
NOT TO  
BUILD ON  
LAND.

Sum re-  
coverable as  
liquidated  
damages on  
breach of  
aforesaid  
covenants.

IN WITNESS, &c.

No. IX.

DEED of ARRANGEMENT *between several Persons interested in REAL ESTATES under a WILL and in the Proceeds of the SALE thereof, for the purpose of confirming certain Mortgages executed by the TRUSTEES of the WILL, and for giving them authority to SELL prior to the time appointed by the TESTATOR.*

DEED OF  
CONFIRMA-  
TION AND  
ARRANGE-  
MENT

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*widow and relict of G. H., late of, &c., deceased*), of the first part, C. D. of, &c., of the second part, E. F. of, &c., of the third part, G. H. of, &c., of the fourth part, L. M. of, &c., of the fifth part, N. O. of, &c., of the sixth part, and U. X. of, &c. (*surviving trustee of will*), of the seventh part: WHEREAS the said G. H., deceased, duly made and executed his last will and testament in writing, dated the — day of —, and thereby gave and bequeathed to — and — the sum of £— apiece, and both the said legacies he charged exclusively on his real estates; and for the better enabling his trustees thereafter named to pay the said legacies, he empowered them to charge his real estates, or any of them, with any sum or sums equal in amount to the said legacies, and to demise the same real estates, or any part or parts thereof, for any term or terms of years or otherwise as they should think fit for securing the payment of such sum or sums of money; and the said testator by his said

Bequest of  
legacies  
which  
testator  
charged on  
his real  
estates, and  
powers to  
trustees to  
charge and  
demise the  
real estates  
to secure  
their pay-  
ment.

DEED OF  
CONFIRMA-  
TION AND  
ARRANGE-  
MENT.

Devise of  
real estates  
to wife  
during her  
widowhood.

And subject  
thereto to  
sell real  
estate.

Moneys  
arising from  
the sale to  
be applied  
in payment  
of the said  
legacies,  
and moneys  
which may  
be charged  
on the real  
estates for  
their pay-  
ment.

Residue  
of trust  
moneys  
directed to  
be divided  
between  
testator's  
children.

Death of  
testator and  
probate of  
his will.

That testa-  
tor's wife  
has not  
married  
again, and  
that all  
children  
have  
attained  
twenty-one.

Surrender  
of copyholds  
by trustees  
of will to  
secure a  
sum of  
money  
pursuant to  
power in  
the will  
for this  
purpose.

will devised all his real estates unto the said U. X. and also Y. Z., their heirs and assigns, upon trust to pay the rents and profits thereof unto his the said testator's wife, the said A. B., during her widowhood, and from and immediately after the decease or marriage of his said wife, which should first happen, the said testator directed that his said trustees should sell, and absolutely dispose of his said real estates as therein mentioned; and the said testator by his said will directed that his said son C. D. should be allowed to purchase certain portions of the said real estates on the terms therein mentioned; and the said testator declared that the said trustees should hold the moneys to arise from such sale or sales upon trust in the first place to pay and satisfy the before-mentioned legacies, so far as the same might then remain unsatisfied, and also all such sums as might have been charged upon his real estates by way of mortgage as aforesaid for the purpose of enabling his said trustees to pay the before-mentioned legacies, and all interest due thereon, together with all expenses attending such sale or sales, and all other expenses incident to the performances of the trusts aforesaid, and after full payment thereof, upon trust to pay and divide the residue of the said trust moneys unto and amongst his the said testator's children, and the said E. F., G. H., L. M., and N. O. in equal shares: AND WHEREAS the said testator died on the — day of —, without having revoked or altered his said will, which was duly proved by the executors thereof, on the — day of —, in the — court of —: AND WHEREAS the said A. B. has continued a widow ever since the death of the said G. H.: AND WHEREAS all the said children of the said G. H. have respectively attained the age of twenty-one years: AND WHEREAS, pursuant to the power of mortgaging, given or limited to them the said U. X. and Y. Z. by the said recited will of the said G. H., deceased, as aforesaid, and in consideration of the sum of £200 by — paid to the said U. X. and Y. Z., they the said U. X. and Y. Z. on the — day of — surrendered out of court into the hands of the lords of the manor of —, all and singular the copyhold or customary hereditaments hereinafter described (being a portion of the hereditaments devised by the said recited will of the said G. H., deceased), to the use of the said —, his heirs and assigns, subject, nevertheless to a condition for making void the said surrender, on payment by the said U. X. and Y. Z. their heirs, executors, administrators, or

assigns, or other the trustees or trustee for the time being of the said will of the said G. H., deceased, unto the said —, his executors, administrators, and assigns, of the sum of £200, together with interest thereon at the rate of £5 per cent. per annum, on the — day of — then next ensuing: AND WHEREAS by an indenture dated the — day of —, and made between the said U. X. and Y. Z. of the one part, and — of the other part, in consideration of the sum of £300 to the said U. X. and Y. Z. paid by the said —, and in further pursuance of the power of mortgaging for this purpose limited to them by the said recited will of the said G. H., deceased, as aforesaid, all and singular the freehold hereditaments herein-after described and assured, or expressed so to be, were demised by the said U. X. and Y. Z. unto the said —, his executors, administrators, and assigns, for the term of two thousand years to be computed from the date of the indenture now in recital, subject to the proviso contained in the same indenture for making void the said term of two thousand years, on payment by the said U. X. and Y. Z., their heirs, executors, administrators, or other the person or persons interested in the said hereditaments and premises under or by virtue of the limitations contained in the said recited will of the said G. H., deceased, or any or either of them, unto the said —, his executors, administrators, or assigns, of the sum of £300, with interest for the same after the rate aforesaid, on the — day of — then next: AND WHEREAS the said Y. Z. died on the — day of —: AND WHEREAS by an indenture dated the — day of —, and made between the same several persons as are parties to these presents and —, in consideration of the sum of £500 to the said U. X. paid by the said — by the direction of the several persons parties thereto of the first six parts, all and singular the real estates devised by the said recited will of the said G. H., deceased, have been assured by the same several persons parties thereto, unto and to the use of the said —, his heirs and assigns, subject to the several hereinbefore recited incumbrances affecting the said real estates, or certain parts thereof as aforesaid, and also subject to the proviso in the indenture now in recital contained for redemption of the said hereditaments and premises on payment by the said several persons parties thereto of the first six parts, or some or one of them, or the heirs, executors, administrators, or

DEED OF  
CONFIRMA-  
TION AND  
ARRANGE-  
MENT.

Pursuant  
to same  
power,  
demise of  
freeholds  
to secure a  
further sum.

Death of  
one of  
trustees  
of will.  
Surviving  
trustee and  
all persons  
beneficially  
interested  
mortgage  
the real  
estate  
comprised  
in will  
(subject as  
aforesaid),  
to secure a  
further  
sum.

DEED OF  
CONFIRMA-  
TION AND  
ARRANGE-  
MENT.

That  
principal  
moneys are  
due.

Desire of  
parties  
beneficially  
interested  
to confirm  
the two first  
securities,  
and that  
trustee  
shall hold  
the real  
estate on  
the trusts  
after men-  
tioned.

Confirma-  
tion by  
parties,  
beneficially  
interested  
of two first  
securities.

Declaration  
and  
arrange-  
ment that  
trustees  
shall hold  
real estates  
in trust to  
sell the  
same at  
their  
discretion.

assigns of them, or some or one of them, unto the said —, his executors, administrators, or assigns, of the sum of £500, and interest thereon after the rate of £5 per cent. per annum, as therein mentioned: AND WHEREAS all the principal moneys secured by the said recited surrender and indentures respectively, are still respectively due and owing on the security of the same surrender and indentures respectively: AND WHEREAS the said several persons parties hereto of the first six parts, are desirous of confirming the said surrender and the firstly hereinbefore recited indenture, and of expressly declaring that the same respectively shall be good and effectual securities for the several sums and interest by the same surrender and indenture respectively secured, or expressed so to be, according to the true intent and meaning thereof respectively, and that, subject thereto, the said U. X., his heirs and assigns, shall hold the said real estates so devised by the said recited will of the said G. H., deceased, as aforesaid, upon and for such trusts, intents, and purposes as are hereinafter contained or referred to concerning the same: NOW THIS INDENTURE WITNESSETH that, for effectuating the said desire, the said several persons parties hereto of the first six parts, do hereby respectively, in all respects, ratify and confirm the said recited surrender and the said recited indenture of the — day of —, and all and singular the charges and estates thereby respectively created and granted, on and in the several hereditaments and real estates in the said surrender and indenture respectively contained, and do hereby respectively in all respects declare that the said surrender and the said indenture of the — day of —, shall be and continue good and effectual securities for the several principal sums and interest thereby respectively secured, or expressed so to be, according to the true intent of the said surrender and indenture respectively: AND THIS INDENTURE ALSO WITNESSETH, that for further effectuating the said desire they the said several persons, parties hereto of the first six parts, do hereby respectively declare, that the said U. X., and his heirs, and all and singular other the trustees or trustee for the time being of the said recited will of the said G. H., deceased, shall henceforth stand seised of and interested in the several freehold and copyhold or customary hereditaments hereinafter described or referred to, that is to say (*here set out the freehold and copyhold parcels*): AND ALSO

DEED OF  
CONFIRMA-  
TION AND  
ARRANGE-  
MENT.

all and singular other the real estate and hereditaments (if any) devised by the said recited will of the said G. H., deceased, upon trust that the said trustee and trustees do and shall, as soon as and whensoever he or they may think fit, and either during the widowhood or at any other time during the life of the said A. B., or subsequent thereto, or to any other event, at his and their own absolute discretion, and without the consent or concurrence of any other person or persons, absolutely sell and dispose of the said freehold and copyhold or customary hereditaments, real estate and premises, hereinbefore described or referred to, either together or in lots, and either by public auction or private contract, and either with or without special conditions or stipulations relative to title or otherwise, with power for the said trustee or trustees to buy in the same, or any of them, at any sale by auction, or to rescind any contract for the sale thereof, and to resell the same from time to time without being answerable for any loss or diminution in price, and with power also to execute assurances, give effectual receipts for the purchase-money, and do all other acts and things which the said trustee or trustees shall think proper for completing any such sale, and do and shall, with and out of the moneys to arise from any such sale or sales as aforesaid, in the first place, pay the costs and expenses incurred in or about the same or otherwise in relation to the premises, and shall, in the next place, pay and discharge all the debts and incumbrances which may then be charged on or affect the hereditaments and premises so to be sold as aforesaid: and shall invest the residue of the said moneys in his or their name or names in the parliamentary stocks or public funds of the United Kingdom, or at interest on government or real securities in England or Wales (but not in Ireland), and in no other mode of investment: with power for the said trustees or trustee from time to time, at their or his discretion, to vary the said investments into or for others of the same or a like nature: AND do and shall stand possessed of the said residuary moneys, stocks, funds, and securities, and the income thereof, upon such trusts as are by the said recited will of the said G. ., deceased, declared and contained of and concerning the moneys to arise from the sale of the said testator's real estates: AND IT IS HEREBY DECLARED that in the event of the said real estates or any of them being sold at any time previous to the time appointed by the said recited will of

And shall stand possessed of moneys arising from the sale after payment of the costs of sale and the debts for the time being, affecting the hereditaments.

To invest the same.

With power to vary the securities as they may think fit.

And to apply the trust moneys, &c. and the annual income according to the trusts declared concerning such moneys in the said will.



DEED OF  
CONFIRMA-  
TION AND  
ARRANGE-  
MENT.

Application  
of annual  
income in  
the event  
of a sale  
before the  
time  
appointed  
by the will.

the said G. H., deceased, for the sale thereof, the income of the moneys arising from such sale or sales as aforesaid shall go and be applied in such manner as the rents and profits of the said hereditaments so to be sold are directed by the said will to go and be applied between the actual period of sale and the time appointed for the sale thereof as aforesaid: AND IT IS HEREBY FURTHER AGREED AND DECLARED that (subject and except so far as the provisions of these presents, or any of them, are expressly inconsistent with the provisions of the said recited will in this behalf) all and singular the real estate of the said testator, and the rents and profits thereof, shall be held upon and for such trusts, intents, and purposes as are in the said recited will expressed and declared of and concerning the same.

IN WITNESS, &c.

### No. X.

LICENCE TO  
USE A  
PATENT.

GRANT of an *exclusive* LICENCE to use a PATENTED INVENTION within a limited district, in consideration of a ROYALTY.

Parties.

Recite grant  
of letters  
patent.

Enrolment  
of specifica-  
tion.

Agreement  
for grant of  
licence.

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*patentee*), of the one part, and C. D. of, &c. (*licensee*), of the other part: WHEREAS by letters patent under the Great Seal of the United Kingdom of Great Britain and Ireland, dated the — day of —, in the — year of the reign of her Majesty Queen Victoria, and duly filed in the High Court of Justice (Chancery Division), her said Majesty granted unto the said A. B. the exclusive privilege of using, exercising, and vending a certain invention for the manufacture of (*here describe the invention*): AND WHEREAS, in pursuance of a condition in the said letters patent contained, the said A. B. did, within the space of six calendar months after the date of the same letters patent, cause to be enrolled in the said Court a particular description of the nature of the said invention by an instrument in writing under his hand and seal: AND WHEREAS the said A. B. hath agreed with the said C. D. to grant to him an exclusive licence to use the said invention within the county of —, upon the terms hereinafter expressed: NOW THIS

INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the reservations and covenants hereinafter contained, the said A. B. doth hereby grant unto the said C. D., his executors, administrators, and assigns, the **SOLE** and **EXCLUSIVE** licence and authority to use and exercise the said invention, according to the specification thereof, within the county of —: To **HOLD** the same unto the said C. D., his executors, administrators, and assigns, for and during all the remainder now unexpired of the term granted by the said letters patent: **YIELDING AND PAYING** to the said A. B., his executors, administrators, and assigns, on the first day of every month, the sum of —, for every — which shall have been made and constructed by the said C. D., his executors, administrators, or assigns, by virtue of the licence hereby granted during the month immediately preceding each such payment: **AND** in case the total amount of the said monthly payments shall in any year ending on the 31st day of December fall short of £—, then **YIELDING AND PAYING** to the said A. B., his executors, administrators, and assigns, on the 31st day of December of every or any year in which such deficiency shall happen, such sum of money as, with the amount of the said monthly payments, will make up the sum of £—: **AND** the said C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors, administrators, and assigns, that the said C. D., his heirs, executors, administrators, or assigns, will pay the royalties and sums of money hereinbefore reserved and made payable at the times and in manner aforesaid: **AND ALSO** will at all times keep a correct and particular account of all — made and constructed by him or them by virtue of this licence, and will at the end of every month furnish to the said A. B., his executors, administrators, or assigns, a true and correct list and particular of all — made and constructed by him or them during the then preceding month, so as to show the amount of royalty payable under the foregoing reservation, and will also furnish to him or them all such information as shall be required in order to test the accuracy of the said list, and will (if required) verify the same by statutory declaration: **AND ALSO** will permit the said A. B., his executors, administrators, or assigns to enter into and upon any place where the — made and constructed under this licence shall for the time being be kept in order to inspect the same: **PROVIDED ALWAYS,**

LICENCE TO  
USE A  
PATENT

Considera-  
tion.

Patentee  
grants  
licence to  
use and  
exercise  
invention  
within  
specified  
district,

at a royalty  
to be paid  
monthly  
for every  
article made  
under the  
licence.

And if the  
monthly  
royalties  
fall short  
of a specified  
annual sum,  
a further  
sum to  
make up the  
deficiency  
at the end  
of the year.

Covenants  
by licensee  
to pay  
royalties ;

to keep  
accounts of  
articles  
constructed  
under  
licence ;

to permit  
grantor to  
inspect  
stock,

Proviso fo  
re-entry on

LICENCE TO  
USE A  
PATENT.

non-pay-  
ment of  
royalty or  
breach of  
covenants.

Covenant by  
grantor for  
quiet enjoy-  
ment by  
licensee.

Not to exer-  
cise patent  
privilege, or  
authorise  
others to do  
so within  
the district  
without the  
consent of  
licensee.

To take pro-  
ceedings at  
request and  
for benefit  
of licensee  
against  
persons  
infringing  
patent  
privilege  
within the  
district.

Upon being  
indemnified  
by licensee  
against  
costs ;

that if default shall be made in payment of any royalty or sum of money payable under the foregoing reservations for the space of fourteen days after the time hereby appointed for such payment, or if any breach shall be committed of the covenants hereinbefore contained (other than the said covenant for payment of the said royalties and sums of money), then and in either of such cases the said A. B., his executors, administrators, or assigns, may, by notice in writing given to the said C. D., his executors, administrators, or assigns, or one of them, or left for him or them at his, their, or one of their usual or last known place or places of abode in England or Wales, declare the licence hereby granted to be void, and the same shall be void accordingly; AND the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that the said C. D., his executors, administrators, and assigns, paying the royalties and sums of money hereinbefore reserved, and observing and performing the covenants hereinbefore on his or their part contained, shall at all times during the residue of the said term peaceably and quietly hold, exercise, and enjoy the licence hereby granted, without any lawful interruption or disturbance by the said A. B., his executors, administrators, or assigns, or any other person whomsoever; AND ALSO that the said A. B., his executors, administrators, or assigns will not at any time during the said term exercise or use or authorise others to exercise or use the said invention within the county of —, without the consent in writing of the said C. D., his executors, administrators, or assigns first had and obtained: AND if any infringement of the said patent privilege shall be committed or threatened by any person or persons whomsoever within the said county, then, and in every such case he the said A. B., his executors, administrators, or assigns, will, at the request and for the benefit of the said C. D., his executors, administrators, and assigns, take such proceedings against the person or persons so infringing or threatening to infringe the said patent privilege for the purpose of recovering damages, or for the purpose of restraining such infringement as shall or may be reasonably required, he the said C. D., his executors, administrators, or assigns, well and sufficiently indemnifying the said A. B., his executors, or administrators, from and against all costs, charges, and expenses attending or incidental to such proceedings as aforesaid: AND FURTHER, that if at any

time or times hereafter, during the continuance of this licence, he the said A. B. shall make or discover any improvement in the said invention, or in the using of the same, or which can or may be applied to the said invention, or shall become the owner of any such improvement, then and in every such case, and whether such improvement shall be the subject of letters patent or not, he the said A. B. will communicate the same to the said C. D., his executors, administrators, or assigns, and the said C. D., his executors, administrators, or assigns, shall be entitled to use and practise such improvement within the said county, during the continuance of the licence hereby granted, without paying any further or other sum of money or acknowledgment in respect thereof.

LICENCE TO  
USE A  
PATENT.

and that  
licensee  
shall be  
entitled to  
benefit of  
all improve-  
ments.

IN WITNESS, &c.

No. XI.

DEED of ASSURANCE and CONFIRMATION of a PIECE of  
LAND which had been unintentionally omitted in  
the Deed conveying the BULK of the PROPERTY (by  
Indorsement on Principal Conveyance).

DEED OF  
CONFIRMA-  
TION.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. (*vendor*), of the one part, and the within-named C. D. (*purchaser*), of the other part: WHEREAS, prior to the execution of the within-written indenture, the said A. B. agreed with the said C. D. for the sale to him, as well of the hereditaments hereinafter described and assured, as also of the hereditaments comprised in the said indenture, at the within-mentioned sum of £—, but by an unintentional omission the hereditaments hereinafter described are not described or referred to in the said indenture, and for the purpose of rectifying and supplying such omission, the said A. B. hath agreed to execute this present deed of assurance and confirmation: NOW THIS INDENTURE WITNESSETH that, in pursuance of the aforesaid agreement and in consideration of the premises, the said A. B. doth hereby grant unto the said C. D. and his heirs, ALL, &c., (*parcels*): AND ALL THE APPURTENANCES to the said hereditaments and premises belonging, AND ALL THE ESTATE, right, title, interest, claim, and demand of the said A. B. in and to the same

Recite omis-  
sion of land,  
and agree-  
ment to  
execute  
present  
assurance.

Grant of  
land,

and all the  
estate, &c.,  
to pur-  
chaser.

DEED OF  
CONFIRMA-  
TION.

Covenants  
for title in  
principal  
deed to  
apply to  
the land  
now  
assured.

and every part thereof: TO HAVE AND TO HOLD the said hereditaments and premises hereby assured, or expressed so to be, unto and to the use of the said C. D., his heirs and assigns, for ever: AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that the covenants for title for quiet enjoyment, for freedom from incumbrances, and for further assurance, contained in the within-written indenture, shall extend and be applicable to the said hereditaments and premises hereinbefore described and assured, or expressed so to be, in every respect as if the same hereditaments and premises had been therein specifically described and assured.

In WITNESS, &c.

## No. XII.

### APPOINTMENT of a STEWARD of large LANDED ESTATES.

APPOINT-  
MENT  
OF STEWARD.

Parties.

Agreement  
to appoint  
steward.

Witnessing  
part.

Appoint-  
ment of  
steward,

with power  
to demand  
rents, &c. ;

THIS INDENTURE made the —— day of ——, BETWEEN A. B. of, &c., of the first part, C. D. of, &c., of the second part, and E. F. of, &c., and G. H. of, &c., of the third part: WHEREAS the said A. B. hath agreed to appoint the said C. D. and the said C. D. hath agreed to be the steward or receiver and general agent of the estates of the said A. B., situate in the county of ——, upon and under the terms and stipulations hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the premises, he the said A. B. doth hereby constitute and appoint the said C. D. to be the steward or receiver and general agent of and for all and singular the lands, hereditaments, and estates of him the said A. B., situate, lying, and being in the county of —— (save and except the manors or lordships of him the said A. B., in the said county, and the courts within the same), with power for the said C. D. for and in the name of the said A. B., to ask, demand, levy, sue for, recover, and receive by all lawful ways and means whatsoever, of and from the present and future tenants and occupiers of the said lands, hereditaments, and estates, and also of and from all other persons liable to pay the same, all and singular the rents, fee farm rents, rent charges, issues, and profits now in arrear and unpaid, and

APPOINT-  
MENT OF  
STEWARD.

which shall hereafter become due or arising out of, for, or in respect of the same lands, hereditaments, and estates, or any of them, or any part thereof (save and except the fees, perquisites, and advantages to the office of steward of the said manors so excepted as aforesaid appertaining): AND upon non-payment of the same, or any part thereof respectively, to enter and distrain upon the hereditaments and premises liable thereto, and the distress and distresses then and there found, to take, lead, drive away, and impound, and in pound to detain and keep or otherwise to sell and dispose of the same according to due course of the law; AND also to commence or institute any action or actions, in any court of law or equity, and to use and pursue such other lawful means and remedies as to the said C. D. may seem proper for the recovery of the said rents, issues, and profits and for recovering, receiving, obtaining, and getting possession of all and every, or any, or any part or parts of the said lands, hereditaments, and estates, and the same action or actions to prosecute and to discontinue, or otherwise to act therein as he the said C. D. shall think proper or be advised: AND upon receipt of the same rents, fee farm rents, rent-charges, issues, and profits, or any part thereof, for him the said A. B. to give effectual receipts and discharges for the same: AND ALSO from time to time, as the said C. D. shall think proper, to sell and dispose of any timber or underwood growing and being upon the said lands, hereditaments, and estates, or any part thereof, and to enter into and execute all such contracts and agreements as may be expedient and proper to be entered into for effecting such sale or sales: AND ALSO to sign and give effectual releases and discharges for the sum or sums of money which shall or may arise or become payable for and in respect of any such sale or sales: AND ALSO to empower the respective purchasers of all or any of such timber and underwood by themselves, or their agents or workmen, to enter into and upon the hereditaments whereon the same shall be growing or be, and with or without horses, carts, and carriages, to carry away the same, and to make sawpits and charcoal pits, and to do all such other acts as shall be necessary for converting and managing the said timber and other trees on such convenient and proper places as shall be from time to time assigned and set out by the said C. D. for that purpose: AND ALSO, from time to time, in the name of the said A. B., to enter into and

to distrain  
&c. ;

to bring  
actions,

to give re-  
ceipts, &c.

to sell  
timber ;

APPOINT-  
MENT OF  
STEWARD.

to do  
repairs and  
insure ;

to enter  
into con-  
tracts for  
leases, &c. ;

and gene-  
rally to  
manage  
estates,

Power to  
steward to  
appoint  
bailiff, and  
to pay him  
a salary  
and make  
him certain  
allowances.

upon, and inspect and survey all and every the said lands, hereditaments and estates at his free will and pleasure, and to view, search, and see the state and condition, and wants of repair or cultivation of the same, and of the buildings, hedges, fences, and ditches upon and belonging to the same, AND to repair and to give orders, and enter into any contract for employing any person or persons in repairing the same, And also for and in the name of the said A. B. to effect such policy or policies for insuring the buildings upon the said estates or any of them from damage or destruction by fire, and in and for such sum or sums of money and at such annual premiums as the said C. D. shall from time to time think proper: And also for and in the name of the said A. B., and as his act or deed, from time to time to enter into and execute any contract or contracts for any lease or leases, or for the renewal of any existing lease or leases of the said hereditaments, or any part or parts thereof, at and under such rents and subject to such covenants and conditions as to the said C. D. shall seem meet, and to accept surrenders of leases and to make allowances to tenants from time to time as occasion shall require or the said C. D. shall think proper: And generally to inspect, manage, oversee, and superintend all and singular the said lands, hereditaments, and estates, And to do any act, matter, or thing for the improving, bettering, preserving, and supporting the same and the income thereof in the most beneficial manner to the best advantage, and as the said C. D. shall in his judgment and according to his discretion, without being answerable for the exercise of such judgment and discretion, think proper: AND THE SAID A. B. doth hereby give and grant unto the said C. D. full power and authority from time to time, whilst and so long as he shall remain in the said office of steward, receiver, and general agent as aforesaid, to appoint any person whomsoever to be a bailiff under him the said C. D., for and in respect of the said lands, hereditaments, and estates, or any part thereof, and to allow to such bailiff for his salary any sum not exceeding the annual sum of £—, to be paid to such bailiff at such times and in such manner as to the said C. D. shall seem fit, and to allow to such bailiff so much hay, corn, straw, and other provender as shall be requisite and sufficient for the keep and maintenance of one horse: AND ALSO from time to time to remove such bailiff, and to appoint any other person in his stead or place,

when and so often as to him the said C. D. shall seem meet: And the said A. B. doth hereby promise and agree to ratify and confirm, and doth hereby ratify and confirm all and whatsoever the said C. D. shall lawfully do or cause to be done in or about the premises: AND THIS INDENTURE FURTHER WITNESSETH that, in further pursuance of the said recited agreement and in consideration of the premises, each of them the said A. B. and C. D. doth hereby for himself, his heirs executors, and administrators, and so far as the covenants, matters, and things hereinafter contained are applicable to him, covenant with the other of them, his executors and administrators, in the manner following (that is to say):

APPOINTMENT OF STEWARD.

Second witnessing part. Mutual covenants by landlord and steward,

THAT the said C. D., so long as he shall be continued in the said office of steward or receiver and general agent, shall and may occupy, possess, and enjoy all that messuage, tenement, or dwelling-house, garden, and premises, commonly called —, situate at —, aforesaid, belonging to the said A. B., and now or late in the occupation of —, without paying any rent, or rates, or taxes, for or in respect of the same, and with such allowance of wood for repairs and firing as is usual in similar cases to be allowed to a resident steward.

that steward may occupy house rent free.

THAT the said C. D. shall receive the annual sum or salary of £—, clear of all taxes or deductions (except the income tax) for his care and trouble as such steward or receiver and general agent of the said lands, hereditaments, and estates as aforesaid, out of which salary he shall pay any clerk or other assistant (except the bailiff to be so appointed by him as aforesaid) whom he may think proper to appoint to assist him in conducting the affairs of the said lands, hereditaments, and estates.

Salary of steward, and allowances to be made to him.

THAT the said C. D. shall also be entitled to or allowed so much hay, corn, straw or other provender as shall be requisite or necessary for the keeping and maintaining of two horses.

Steward to have provender for two horses.

THAT the said C. D. shall yearly, and every year during the continuance of his said office, apply the moneys which shall come to his hands by virtue of these presents, and of the powers and authorities hereby vested in him, in manner following (that is to say): IN the first place, in paying or retaining to himself thereout, from time to time, the said annual salary or sum of £—, and the costs of such maintenance and keep for two horses as aforesaid, and also in payment of the salary of the bailiff, to be so from time to time appointed by the said C. D.

Steward to apply moneys received by him,

first, in paying his salary, &c., and salary of bailiff;



as aforesaid ; and in the next place, in payment of all costs, charges, and expenses which he the said C. D. shall or may sustain, incur, or be put unto, in or about the collecting and receiving of the rents and profits of the said lands, hereditaments, and estates, or any part thereof, in bringing, instituting, and prosecuting, or in defending any action or actions relating to the said lands, hereditaments, and estates, rents and moneys aforesaid, or otherwise in managing and superintending the said lands, hereditaments, and estates, and in the execution of the several powers and authorities vested in him the said C. D., under or by virtue of these presents: And also in payment, from time to time, of all rates, taxes, assessments, and other outgoings to be from time to time payable in respect of the said lands, hereditaments and estates, or any part or parts thereof, and which the said A. B., from time to time, shall be liable or bound to pay, and also of the premiums of any such insurance or insurances as shall be from time to time effected upon the buildings upon the said lands, hereditaments, and estates, or any of them as aforesaid: And also in payment from time to time of the expenses to be incurred on account of the repairs which shall from time to time be made upon any part or parts of the said lands, hereditaments and estates, and which the respective tenants thereof shall not be liable to pay: And that from and after full payment and satisfaction of all such sum or sums of money, costs, and expenses respectively as aforesaid, the said C. D. shall from time to time pay all the clear surplus of the moneys which shall come to his hands by virtue of or under these presents unto the said A. B., or to the account of the said A. B. at Messrs. — & Co., his bankers, at —, or such other bankers or otherwise as the said A. B. shall from time to time direct: PROVIDED ALWAYS, that the said C. D. shall not at any one time retain in his hands out of the moneys to be received by him by virtue of or under these presents, any further or greater sum than the sum of £—— (over and above the amount then actually due and owing for or in respect of the management of the said lands, hereditaments, and estates under or in execution of the powers aforesaid) for meeting the current expenses of the said lands, hereditaments, and estates, or the management thereof.

THAT the said C. D., shall well and faithfully and to the best of his ability execute all the powers, authorities, and trusts

APPOINTMENT OF STEWARD.

next in payment of expenses of collecting rents, &c.,

and of rates and taxes, &c.;

and expenses of repairs.

Surplus to be paid to landowner.

Steward not to retain in his hands above a certain sum at any one time.

That steward shall faithfully per-

hereinbefore reposed or vested in him, and shall from time to time, well and faithfully account to the said A. B. for all moneys to be received by him by virtue of these presents.

APPOINT-  
MENT OF  
STEWARD.

form his  
duties,  
and keep  
proper  
books of  
account.

THAT the said C. D. shall keep proper books of account in which shall be entered full and true particulars of all sums of money received for or in respect of the said lands, hereditaments, and estates, and also of all payments and allowances made for or on account of the same, and which books of account shall be open to the inspection of the said A. B. at such times and places, and in such manner as he shall direct; and that the said C. D. shall once in every year, or oftener if requested by the said A. B., furnish to the said A. B. a clear statement in writing of the income and expenditure of, upon, or in respect of the said lands, hereditaments, and estates, with all such particulars relating to the same, and in such manner as the said A. B. shall from time to time direct.

THAT if the said A. B. shall at any time be desirous of removing the said C. D. from the said office of steward or receiver and general agent of his said lands, hereditaments, and estates, and shall give notice of such his desire to the said C. D., either personally or by writing under his hand, to be left for the said C. D. at the said dwelling-house to be so occupied by him at — aforesaid, or if the said C. D. shall be desirous of retiring from the said office, and shall give to the said A. B. notice of such his desire, either personally, or by writing under his hand, to be left for the said A. B. at his mansion of —, in the county of —: THEN, and in either of the said cases, at the expiration of six calendar months from the giving or leaving of such notice as aforesaid, or in case from any cause the said C. D. shall become incapable of acting in the said office, then, and in such last-mentioned case, upon the happening of such contingency, the said C. D. shall cease to be such steward or receiver and general agent as aforesaid, and all and singular the powers, and authorities, and trusts hereinbefore reposed or vested in the said C. D. shall cease and determine, and then and in such respective cases, and also on the determination of his said office by any other means or in any other manner, all such accounts and reckonings shall be made and taken as are usual in like cases; and all books of accounts, rentals, and other documents in the possession or custody of the said C. D., touching or concerning the said estate, shall be delivered up to the said A. B., or to such person or persons as he shall direct.

Power to  
either party  
to deter-  
mine  
appoint-  
ment by  
notice.

APPOINT-  
MENT OF  
STEWARD.

Arbitration  
clause.

THAT in case any dispute or difference shall arise between the said A. B. and C. D. touching or concerning the construction of, or in anywise relating to these presents, or anything herein contained, such dispute or difference shall be referred to the arbitration of two indifferent persons, one to be chosen by the said A. B. and the other by the said C. D.; and in case such two persons cannot agree in their arbitration, then the same shall be referred to such third person as an umpire between them as the said first-mentioned referees shall for that purpose agree upon and appoint, and the decision of such two first-mentioned referees, or of their umpire, shall be binding and conclusive between all the said parties to these presents.

Bond by d  
steward and  
his sureties  
for faithful  
perform-  
ance of  
duties.

AND LASTLY, for the performance of all and singular the covenants hereinbefore contained on the part of the said C. D., and the faithful execution of all and singular the powers, authorities, and trusts hereinbefore reposed or vested in the said C. D., and for the well and faithfully accounting by him the said C. D. to the said A. B., his executors or administrators, for all moneys to be by him the said C. D. received by virtue of or under these presents, the said C. D. and the said E. F. and G. H. as the sureties for him the said C. D., do jointly and severally bind themselves, their respective heirs, executors, and administrators, unto the said A. B. in the sum of £——.

IN WITNESS, &c.

No. XIII.

DEED OF  
SEPARATION.

DEED of SEPARATION *between* HUSBAND and WIFE  
COVENANT *by* HUSBAND to *permit* his WIFE to *live*  
*separate*; COVENANTS *by* the TRUSTEES to *indemnify*  
*the* HUSBAND *against* all obligations to MAINTAIN  
*his* WIFE, or to *answer* for her DEBTS (a). PRO-  
VISION *as* to CUSTODY of CHILDREN.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c.  
(*husband*), of the first part, C. B. of, &c. (*wife of the said A. B.*),

(a) A covenant by the trustees to indemnify the husband from the wife's debts, is a sufficient consideration to support a separation deed, and make it binding on the husband (*Stevens v. Olive*, 2 B. C. C. 90). But specific performance of a mere voluntary instrument, where no consideration moves from the trustees, cannot be enforced against the husband (*Walrond v. Walrond*, Johns. 18).

of the second part, and E. F. of, &c., and G. H. of, &c. (*trustees*) of the third part: WHEREAS unhappy differences have arisen between the said A. B. and C. his wife, and they have consequently agreed to live separate from each other for the future, and to enter into such arrangement as is hereafter expressed: AND WHEREAS the said A. B. and C. his wife have two children, viz., L. B., now of the age of — years, and M. B. now of the age of — years: AND WHEREAS, &c. (*recite certain deeds of even date whereby special provision is made for the said C. B. by the said A. B.*): NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of the covenants hereinafter contained on the part of the said E. F. and G. H., he the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said E. F. and G. H., their executors, and administrators, that the said C. B. shall and may at all times hereafter, notwithstanding her coverture, live separate and apart from the said A. B., as if she were a feme sole, and shall henceforth be freed from the control and authority of the said A. B., and shall reside in such place or places and in such manner as she shall think fit, and that the said A. B. will not at any time hereafter, require her to live with him, or institute any legal proceedings or take any other steps whatsoever for that purpose, and will not in anywise molest or interfere with the said C. B. in her manner of living or otherwise: AND ALSO that all real and personal property, if any (other than the property mentioned in the hereinbefore recited indentures), of or to which the said C. B. now is, or she or the said A. B. in her right shall at any time or times during the joint lives of the said A. B. and C. B. become seised, possessed, or entitled by any means, and for any estate or interest whatsoever, shall and may be held and enjoyed by the said C. B. for her sole and separate use, and may be sold, given away, devised, bequeathed, or disposed of, by the said C. B. without any interference or control by or on the part of the said A. B., as fully and effectually and in like manner in all respects as if the said A. B. were then dead: AND THAT if the said C. B. shall die intestate as to any personal property hereby made disposable of by her as aforesaid, the same shall upon her death go to the person or persons who under the statutes for the distribution of the effects of intestates would have been entitled thereto if the said C. B. had died absolutely possessed

DEED OF SEPARATION.

Recite that unhappy differences have arisen.

Covenant by husband that his wife may live separate;

that he will not molest her.

That wife may dispose of other property as if husband were dead.

DEED OF  
SEPARATION.

Second  
witnessing  
part.

Covenants  
by trustees  
to indem-  
nify hus-  
band  
against  
debts of  
wife;

and that  
wife shall  
not bring  
any action,  
&c., for  
compelling  
him to sup-  
port her.

Agreement  
as to  
custody of  
children.

thereof and having survived the said A. B., such persons (if more than one) to take in the shares in which the same would have been divisible between them under the same statutes: AND ALSO that he the said A. B. shall and will from time to time, at the cost of the person or persons requiring the same, do and execute all such acts, deeds, and things, for the purpose of carrying into full effect the provisions of these presents, as by the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall be reasonably required: AND THIS INDENTURE ALSO WITNESSETH that, in further pursuance of the said recited agreement, and in consideration of the premises, the said E. F. and G. H. do hereby for themselves, and each of them doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., his heirs, executors, and administrators, that they the said E. F. and G. H. their heirs, executors, and administrators, shall and will at all times hereafter, during the continuance of the said separation, keep indemnified the said A. B., his heirs, executors, and administrators, from and against all debts and liabilities hereafter to be contracted or incurred by the said C. B., whether for her wearing apparel, maintenance, support, or otherwise, and from and against all actions, accounts, claims, demands, costs, charges, losses, damages and expenses for or on account or in respect of such debts and liabilities, or any of them, or any act, deed, or thing in anywise relating to the premises: AND FURTHER, that the said C. B., or any person on her behalf, shall not nor will at any time hereafter commence or prosecute any action or other proceeding for compelling the said A. B. to allow her any support, maintenance, or alimony whatsoever, or to cohabit or live with her the said C. B.: AND IT IS HEREBY AGREED, between and by the parties hereto that the said A. B. shall have the custody of the said L. B., and the said C. B. shall have the custody of the said M. B., and that the said A. B. shall have access to the said M. B., and the said C. B. shall have access to the said L. B. under such arrangements as shall from time to time be made between them for that purpose, or if they shall be unable to agree, then under such arrangements as shall be made by the said E. F. and G. H. or the survivor of them (a).

IN WITNESS, &c.

(a) The father has at common law the right to the custody of all his

No. XIV.

ASSENT *by an* EXECUTOR *to a* BEQUEST of LEASEHOLDS ASSENT BY  
EXECUTOR TO  
BEQUEST.  
*for YEARS.*

THIS INDENTURE, made the — day of — BETWEEN Recite lease  
and will of  
lessee.  
A. B. of, &c. (*executor of lessee*), of the one part, and C. D. of  
&c. (*legatee*), of the other part: WHEREAS (*recite lease to E. F.  
for 500 years*): AND WHEREAS the said E. F. duly made his  
will dated the — day of —, and thereby bequeathed the  
premises comprised in the said indenture of lease to the said  
C. D., and appointed the said A. B. sole executor of his said  
will (*death of testator and probate of his will*): AND WHEREAS  
the funeral and testamentary expenses, and all the debts of the  
said testator, have been satisfied: NOW the said E. F. doth Executor's  
assent to  
bequest.  
hereby as such executor as aforesaid, ASSENT and CONSENT to  
the said bequest of the said premises comprised in the said  
lease so bequeathed by the said recited will to the said C. D.  
as aforesaid: AND THE SAID A. B. doth hereby for himself, his  
heirs, executors, and administrators, covenant with the said C. D., Covenant  
against in-  
cumbrances  
his executors, administrators, and assigns, that the said A. B.  
hath not done or knowingly suffered anything whereby the  
said leasehold premises, or any part thereof, are, is, can, or shall  
be in anywise incumbered.

IN WITNESS, &c.

children. But by the stat. 2 & 3 Vict. c. 54, power was given to the Court of Chancery to order an infant under the age of seven years to be delivered into the custody of his mother. By a recent Act (36 Vict. c. 12) the power of the court is extended to the age of sixteen years, and the court has also power to make regulations as to the access of the father or other guardian. The Act also provides that no agreement contained in any separation deed made between the father and mother of an infant shall be held invalid by reason only of its providing that the father shall give up the custody or control of the infant to the mother, but with a proviso that no court shall enforce such agreement if it will not be for the benefit of the infant to give effect thereto. As to the principles which guide the court in cases under the Act, see *In re Taylor*, L. R. 4 C. D. 157; *Re Besant*, W. N. 1878, p. 119. Before the Act an agreement that the wife should have the custody of the children had been held void (*Vansittart v. Vansittart*, 4 K. & J. 62; *Walrond v. Walrond*, Johns. 18).

APPOINT-  
MENT BY  
INFANT OF  
GUARDIAN.

## No. XV.

APPOINTMENT *by an* INFANT *of a* GUARDIAN *of his*  
PERSON *and* ESTATE (a).

KNOW ALL MEN BY THESE PRESENTS, that I, A. B. of  
&c. (*infant*), being now of the age of ——— years or thereabouts,  
do hereby appoint C. D. of, &c. (*guardian*), to be the guardian  
of my person and estate until I shall attain the age of twenty-  
one years.

As WITNESS my hand this ——— day of ———, 18—.

(Signed)

A. B.

## No. XVI.

GIFT OF  
COTTAGES  
FOR ALMS-  
HOUSES.

DEED *of* GIFT *of* COTTAGES *to* TRUSTEES *to be used as*  
ALMSHOUSES (b).

Donor  
grants to  
rector and

KNOW ALL MEN BY THESE PRESENTS, that A. B. of  
P—— Court, in the county of ———, Esq., doth by this deed

(a) When an heir in socage has no testamentary guardian, he may at the age of fourteen years choose a guardian for the remainder of his minority (Co. Litt. 78 b. ; Macpherson on Infants, 76). The election by an infant of his own guardian does not supersede the authority of the Court of Chancery, and as it is doubtful what are the powers of a guardian so elected, this course is seldom resorted to.

9 Geo. 2,  
c. 36.

(b) The Act 9 Geo. 2, c. 36, enacts that no hereditaments, or personal estate to be laid out in the purchase of hereditaments, shall be given, conveyed, or settled, or anyways charged or incumbered in trust or for the benefit of any charitable uses whatsoever, unless such gift or settlement be made by deed sealed and delivered in the presence of two credible witnesses, twelve calendar months before the death of the donor, including the days of execution and death, and enrolled in Chancery within six calendar months from the death, and unless the same be made to take effect in possession for the charitable use, and be without any power of revocation, reservation, trust, &c., for the benefit of the donor or of any persons claiming under him. The Act contains a proviso that purchases for valuable consideration shall not be avoided by the death of the grantor within the twelve calendar months. See also the Acts 24 Vict. c. 9, and

sealed and delivered by him in the presence of two credible witnesses and intended to be enrolled in the High Court of Justice (Chancery Division) within six calendar months after the execution hereof, pursuant to the Act of Parliament passed in the ninth year of the reign of King George the Second, chap. 36, freely and voluntarily grant and convey unto the Rev. C. D., the present rector of the parish of P——, in the county of ——, and E. F. and G. H., both of P—— aforesaid, farmers

GIFT OF  
COTTAGES  
FOR ALMS-  
HOUSES.

church-  
wardens.

25 & 26 Vict. c. 17, amending and explaining the previous Act in some respects.

By the Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), amended by the subsequent Acts of 1855, 1860, and 1869 (18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; and 32 & 33 Vict. c. 110), the management of charities has been placed under the control of a Board, called "The Charity Commissioners for England and Wales," to whom ample powers are given for that purpose. The Board may require the acting trustees to render accounts and statements in relation to the charity (sect. 10), and may authorise sales, exchanges, and leases of the charity property (sects. 21, 24, 26). By sect. 15 of 18 & 19 Vict. c. 124, the secretary for the time being of the Board is a corporation sole under the title "The Official Trustee of Charity Lands;" and by the combined operation of the following provisions, viz., 16 & 17 Vict. c. 137, sects. 48, 49; 18 & 19 Vict. c. 124, s. 15; and 23 & 24 Vict. c. 136, s. 2, it is provided that, where any land holden upon any trust for a charity is vested in any persons other than the persons acting in the administration and application of the rents, or where there are no trustees, or the trustees or any of them are unwilling to act, or it is uncertain in whom such land is vested, or all or any of the persons in whom it is vested cannot be bound, or are under age, lunatic, or of unsound mind (whether found such by inquisition or not), or otherwise incapable of acting, or are out of the jurisdiction, or where by reason of the reduced number of trustees or other causes a valid appointment of new trustees cannot be made, or where by reason of the expenses incident to the appointment of new trustees and the conveyance or assignment of such land to such new trustees, it appears to the Board of Charity Commissioners desirable so to do, the Board may order that such land be vested in the official trustee of charity lands, and thereupon the same shall vest in such official trustee without any conveyance. But the Board are not to make any such vesting order with respect to any charity the income of which amounts to £50 or upwards, except upon the application of the acting trustees or a majority of them (23 & 24 Vict. c. 136, s. 4). And where the trustees have power to determine on any sale, exchange, partition, mortgage, lease, or other disposition of any charity property, a majority of such trustees present at a meeting duly constituted, voting on the question, have full power to execute and do all assurances, acts, and things for carrying any such sale, &c., into effect, and all such assurances, &c., have the same effect as if they were executed or done by all the trustees and by the official trustee of charity lands (31 & 32 Vict. c. 110, s. 12).

Charitable  
Trusts Acts.

Where it is wished, in order to save the expense of the conveyance, which would otherwise be necessary on every change of trustees, to vest the legal estate in charity lands in the official trustee, it is not proper for the founder of the charity to convey it in the first instance to the official trustee—he should convey it to the acting trustees appointed by himself, and, when thus clothed with the charitable trust, it may be vested in the official trustee by an order of the Board made on the application of the trustees.

Course to be  
pursued to  
vest lands  
in official  
trustee.



GIFT OF  
COTTAGES  
FOR ALMS-  
HOUSES.

Cottages.

Habendum  
to rector  
and church-  
wardens  
to use of  
donor, and  
rector and  
church-  
wardens  
in fee,  
in trust to  
permit  
same to be  
used as  
almshouses,  
subject to  
following  
regula-  
tions :—

1. Charity  
to be under  
manage-  
ment of  
the P—  
Court trust-  
tee, and  
the rector  
and church-  
wardens for  
the time  
being.

2. Defini-  
tion of  
P— Court  
trustee.

(the present churchwardens of the said parish), and their heirs, ALL those six cottages, tenements, or almshouses, now being erected by the said A. B. on land belonging to him, situate in the parish of P— aforesaid, and adjoining the turnpike road leading from — to —, and the garden ground or land belonging and adjoining to the said cottages, all which premises contain together —, or thereabouts, and the same are delineated in the map or plan drawn in the margin of these presents, and are therein coloured pink, Together with all rights, members, and appurtenances to the said premises belonging or in any-wise appertaining or reputed to belong or be appurtenant thereto, (And all the estate, &c.): TO HAVE AND TO HOLD the cottages and premises hereby granted and conveyed, or expressed so to be, unto the said C. D., E. F., and G. H., and their heirs, to the use of the said A. B., C. D., E. F., and G. H., their heirs and assigns, in trust to permit the same to be for ever hereafter occupied by aged or infirm persons, inhabitants of the said parish of P—, according and subject to the rules, regulations and provisions for the administration and management of the charity intended to be hereby established, which are hereinafter expressed and contained (that is to say) :—

1. THE charity shall be under the sole management and control of the following persons as trustees: (that is to say), the P— Court trustee for the time being, as hereinafter defined, the rector for the time being of the parish of P—, and the churchwardens for the time being of the said parish.

2. THE owner for the time being of the capital messuage called P— Court, or other the principal messuage which shall for the time being be standing on the lands and hereditaments now known as the P— Court estate, or on any lands and hereditaments which may hereafter be added to and form part of the P— Court estate, shall be the P— Court trustee, provided that such owner shall be of full age, and shall be residing at such capital or principal messuage as aforesaid, or elsewhere in the parish of P—, or within — miles of such parish. If the said capital or principal messuage shall at any time be settled, the person for the time entitled to the first estate of freehold therein shall be deemed the owner thereof. If there shall at any time be two or more joint or co-owners, such one of them as shall be of full age and residing as aforesaid, shall be the P— Court trustee; but if two or more of such

joint or co-owners shall be of full age and residing as aforesaid, they shall select one of their number to be the P—— Court trustee. A woman, if unmarried, may be a trustee; but if a woman who would otherwise be the P—— Court trustee shall marry, then her husband, if of full age and residing as aforesaid, shall be the trustee during such time as she, if unmarried, would be the trustee. If the person who would otherwise be the P—— Court trustee shall be a minor, his or her guardian, if residing as aforesaid, and willing to act, or such one of his or her guardians residing as aforesaid as shall be willing to act, shall be the P—— Court trustee during such minority, unless such minor shall be a married woman, in which case her husband, if of full age and residing as aforesaid, shall be the P—— Court trustee.

GIFT OF  
COTTAGES  
FOR ALMS-  
HOUSES.

3. IF it shall at any time happen that there shall be no duly qualified P—— Court trustee, or such trustee being duly qualified shall be unable or unwilling to act, the rector and churchwardens for the time being of the said parish shall for such time act as the sole trustees of the charity.

3. If no  
P—— Court  
trustee,  
rector and  
church-  
wardens  
to be sole  
trustees.

4. IN accordance with the aforesaid provisions, the above-named A. B., C. D., E. F., and G. H., are hereby constituted the first trustees of the charity, and the said C. D., E. F., and G. H., shall respectively cease to be trustees, if and when they shall respectively cease to be rector and churchwardens of the said parish.

4. Appoint-  
ment of first  
trustees.

5. WHENEVER any necessity arises for transferring the legal estate in the said premises, the trustees shall, and they may, if they think fit, at any other time, apply to the Charity Commissioners for an order vesting the estate in the official trustee of charity lands.

5. Legal  
estate may  
be trans-  
ferred to  
official  
trustee of  
charity  
lands.

6. THE trustees shall from time to time elect to be inmates of the cottages such aged or infirm persons, inhabitants of the said parish of P——, as they the trustees shall consider most deserving objects of the charity. Such inmates may be of either sex, and may be either married or single. No able bodied person shall be elected, and no inmate shall, without the express permission of the trustees, be allowed to have any person, whether a member of his or her family, or any other person, to live with him or her in the almshouses: it being the intention of the founder of the charity to provide a home for aged or infirm persons who would otherwise be probably compelled to end their days in the union workhouse.

6. Who are  
to be in-  
mates.

GIFT OF  
COTTAGES  
FOR ALMS-  
HOUSES.

7. No person to be ineligible on account of religious opinions.

8. Inmates to have use of gardens.

9. Small rent may be imposed on inmates for certain purposes.

10. Trustees may make rules as to conduct of inmates, and may expel any inmate by giving a month's notice.

11. Business to be conducted at meetings.

12. An ordinary meeting to be held each year.

13. Special meetings may be called by any two trustees by notice

14. Place of meetings

7. No person shall be ineligible or considered a less deserving object of the charity by reason or on account of his or her religious opinions.

8. THE inmates of the cottages shall be permitted to use the gardens attached to the cottages, subject to such rules and regulations as the trustees may from time to time prescribe.

9. THE trustees may impose on the inmates of the cottages such small rent as they the trustees may from time to time think necessary or proper for the purpose of paying for the necessary repairs of the cottages, or for insuring the same against loss or damage by fire, or for defraying any expenses which may be incurred in or about the management and administration of the charity, or as evidence of the title of the trustees, but no rent or other payment beyond what shall be necessary for the aforesaid purposes shall be required from the inmates.

10. THE trustees may make such rules as to the conduct of the inmates, and may at any time expel or remove any inmate either for misconduct, or because, in the opinion of the trustees, he or she is no longer a proper object of the charity, or for any other reason, by giving to him or her one calendar month's notice in that behalf.

11. THE election of inmates of the cottages, and all other business of the charity, shall take place and be transacted at ordinary or special meetings of the trustees.

12. THERE shall be one ordinary meeting of the trustees held in each year for transacting the general business of the charity, and such ordinary meeting shall be held on some convenient day to be appointed by the trustees themselves.

13. ANY two of the trustees may call a special meeting by delivering at the respective dwelling-houses of the other trustees, or sending to them respectively through the post twenty-one days' previous notice of such meeting, stating the time and place of holding the same, and the objects or purposes for which it is to be held. A notice sent through the post, and addressed to a trustee at his dwelling-house, shall be effective although such trustee may at the time be absent from home, and may never actually receive such notice.

14. ALL meetings of the trustees shall be held either at P— Court aforesaid, or at the rectory, or at such other convenient place within the parish of P—, as shall be agreed

on by the trustees, or named in the notice convening such meeting.

GIFT OF  
COTTAGES  
FOR ALMS-  
HOUSES.

15. THREE trustees present at a meeting shall form a quorum.

15. Three  
trustees  
to be a  
quorum.

16. AT every meeting of the trustees the P—— Court trustee (if present), or if the P—— Court trustee shall be absent, then the rector of the parish, shall be the chairman of the meeting.

16. Chair-  
man of  
meetings.

17. THE election of the inmates of the cottages and all other business brought before any meeting, shall be decided by a majority of votes of the trustees present, and in case of an equality of votes, the chairman of the meeting shall have a casting vote.

17. Voting.

18. MINUTES of the proceedings of every meeting of the trustees shall be entered in a book to be kept for that purpose and signed by the chairman of such meeting, or of the following meeting, when they are read over, and shall, when so entered and signed, be conclusive evidence of the business and other matters transacted at such meeting.

18. Minutes  
to be kept.

19. THE trustees may from time to time make such rules and bye-laws for and in relation to the conduct of the business of the charity not inconsistent with the main objects of the foundation as they may think fit.

19. Trustees  
may make  
bye-laws.

IN WITNESS, &c.

## No. XVII.

DEED *creating a MONEY ENDOWMENT for the ALMS-  
HOUSES established by the last PRECEDENT.*

DEED  
CREATING  
MONEY  
ENDOWMENT  
FOR ALMS-  
HOUSES.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of P—— Court, in the county of ——, Esq., the Rev. C. D. (the present rector of the parish of P——, in the said county), and E. F. and G. H., both of P—— aforesaid, farmers (the present churchwardens of the said parish), SEND GREETING: WHEREAS the said A. B., by a deed-poll dated the —— day of ——, 18——, duly executed and enrolled in the High Court of Justice (Chancery Division), pursuant to the Act passed in the ninth year of the reign of King George the Second, cap. 36,

Recital of  
deed of  
grant of  
almshouses  
to trustees.

DEED  
CREATING  
MONEY  
ENDOWMENT  
FOR ALMS-  
HOUSES.

Transfer by  
donor of  
stock into  
names of  
trustees.

Witnessing  
part.  
Declaration  
of trust of  
stock.

1. Trustees  
of alms-  
houses to be  
trustees of  
stock.

2. Dividends  
to be applied  
for repairs  
and in-  
surance of  
almshouses.

3. Trustees  
may apply  
any surplus  
in their  
hands above  
a certain  
sum for  
benefit of  
inmates.

granted and conveyed ALL those six cottages, &c. (*describing them*), with their appurtenances, to the use of the said A. B., C. D., E. F., and G. H., their heirs and assigns: IN TRUST to permit the same to be for ever thereafter occupied by aged and infirm inhabitants of the said parish of P—, according and subject to the rules, regulations, and provisions for the administration and management of the charity intended to be thereby established, which were thereafter expressed and contained: AND WHEREAS the said A. B. has lately caused the sum of £—— £3 per Cent. Consolidated Bank Annuities to be transferred into the names of the said A. B., C. D., E. F., and G. H., in the books of the Governor and Company of the Bank of England, for the purposes hereinafter expressed: NOW THESE PRESENTS WITNESS, and it is hereby declared, and, in particular, the said A. B. doth hereby direct, that the said sum of £—— £3 per Cent. Consolidated Bank Annuities (hereinafter called “the said trust stock”) shall be for ever hereafter held in trust for the following purposes (that is to say) :—

1. THE trustees for the time being of the charity established by the said recited deed, dated the — day of —, 18—, shall always be the trustees for the administration of the charity established by these presents.

2. THE said trustees shall for ever hereafter receive the dividends of the trust stock, and shall with and out of the said dividends, in the first place, keep the almshouses established by the said recited deed insured against loss or damage by fire, in such an amount as they shall think sufficient; and shall, in the next place, with and out of the said dividends, keep the said almshouses in good and substantial repair: AND the said trustees shall lay out all moneys (if any) which may be received from time to time under or by virtue of any such insurance as aforesaid, in or towards the rebuilding and reinstating the said almshouses, or such part thereof as shall or may be burnt down or damaged by fire.

3. IF and whenever the said trustees shall have in their hands a sum of money arising from the dividends of the said trust stock not required for the purposes aforesaid, exceeding in amount the sum of £——, the said trustees may, if they think fit, apply the whole or any part of the surplus over and above the said sum of £——, for the benefit of the inmates for the time being of the said almshouses, or any of such inmates, in such manner as they may think proper.

4. WHENEVER any necessity arises for transferring the said trust stock, the trustees for the time being shall, and they may, if they think fit, at any other time, apply to the Charity Commissioners for England and Wales for an order directing the transfer thereof to the Official Trustees of Charitable Funds, in trust for the said charity, and shall, upon such order being obtained, transfer the said stock accordingly.

IN WITNESS, &c.

DEED  
CREATING  
MONEY  
ENDOWMENT  
FOR ALMS-  
HOUSES.

4. Stock  
may be  
transferred  
to official  
trustees.

### No. XVIII.

GRANT of a piece of GROUND to the GOVERNORS of  
QUEEN ANNE'S BOUNTY as a SITE for a PARSONAGE  
HOUSE (a).

GRANT OF  
PIECE OF  
GROUND AS A  
SITE FOR A  
PARSONAGE.

THIS INDENTURE, made, &c., BETWEEN A.B. of, &c. (*grantor*), of the one part, and the Governors of the Bounty of Queen Anne for the augmentation of the maintenance of the poor clergy (*grantees*), of the other part, WITNESSETH, that the said A. B. doth hereby freely and voluntarily and without any valuable consideration, grant and convey unto the said Governors and their successors, ALL THAT piece of ground (*here describe the parcels*), AND ALL and singular the ways, liberties, privileges, and appurtenances thereunto belonging (*and all the estate, &c.*): TO HOLD the same unto and to the use of the said Governors and their successors: TO THE INTENT that a house may be built upon a part of the said piece of ground, and be used and appropriated as and for a house of residence, and that the remainder of the said piece of ground may be appropriated as and for a garden or glebe, for the use of the minister or incumbent for the time being of — church at —, and generally to the intent that the said piece of ground and premises shall henceforth be devoted to the augmentation of the maintenance of the said minister or incumbent, according to the true intent and meaning of the several Acts of Parliament in that case made and provided. (*Covenants by A. B. for right to convey, for quiet enjoyment, for freedom from incumbrances, and for further assurance.*)

Grant of  
land to  
Governors  
of Queen  
Anne's  
Bounty.

That a  
parsonage  
house may  
be built and  
be used as  
a residence  
for incumbent.

IN WITNESS, &c.

(a) This deed must be enrolled, 2 & 3 Anne, c. 20, s. 4.

## No. XIX.

GRANT OF  
LAND TO  
ECCLESIASTI-  
CAL COM-  
MISSIONERS.

GRANT of LAND to the ECCLESIASTICAL COMMISSIONERS  
for the ENDOWMENT of the INCOME of a PERPETUAL  
CURATE of a new DISTRICT CHURCH (a).

THIS INDENTURE, made the — day of —, BETWEEN A. B. of, &c. (*grantor*), of the one part, and the Ecclesiastical Commissioners for England (*grantees*), of the other part, WITNESSETH, that under the authority of Acts passed in the sessions of Parliament, held in the sixth and seventh, and seventh and eight years of the reign of her present Majesty, intituled respectively, “An Act to make better Provision for the Spiritual Care of Populous Parishes,” and “An Act to explain and amend an Act to make better Provision for the Spiritual Care of Populous Parishes,” the said A. B. doth by these presents freely and voluntarily, and without any valuable consideration, grant, convey, and assure to the said Ecclesiastical Commissioners, ALL, &c. (*describe the premises to be conveyed*), AND ALL the right, title, and interest of the said A. B., to and in the same and every part thereof, To HOLD the same to the said Commissioners and their successors for the purpose of, &c. (*describe the particular purpose, being some purpose within the provisions of the said Acts*). (*Covenants by A. B. for right to convey, for quiet enjoyment, for freedom from incumbrances, and for further assurance.*)

Grant of  
land to  
Ecclesiasti-  
cal Com-  
missioners

IN WITNESS, &c.

(a) Lands or any other property may be granted either by deed enrolled or by will, and may either be voluntarily given, or sold for a valuable consideration to the Ecclesiastical Commissioners, for the endowment or augmentation of the income of ministers or perpetual curates of new district churches, or for providing any church or chapel for the purposes of the Act, 6 & 7 Vict. c. 37, s. 22.

The Statutes of Mortmain do not apply to endowments under the Church Building Acts, except where the endowment exceeds the annual value of £300—3 & 4 Vict. c. 60, ss. 2, 3, 17; 14 & 15 Vict. c. 97, s. 8.

## No. XX.

AWARD *as to PURCHASE and COMPENSATION MONEY*  
*to be paid in respect of LANDS taken by a RAILWAY*  
 COMPANY (a).

AWARD AS  
 TO COMPEN-  
 SATION FOR  
 LAND  
 TAKEN BY A  
 RAILWAY  
 COMPANY.

TO ALL TO WHOM THESE PRESENTS SHALL COME,

I, A. B. of, &c. (*arbitrator*), SEND GREETING: WHEREAS by an instrument in writing dated the — day of —, and under the respective hands of C. D. of, &c. (therein stated to be the tenant for life of the lands and hereditaments thereafter mentioned), and E. F. of, &c., the secretary of the — Railway Company (therein and hereinafter called “the Company”), it was, in pursuance of the Lands Clauses Consolidation Act, 1845, referred to me as a single arbitrator to award and determine what sum of money ought to be paid by the company for the purchase of the inheritance in fee simple of the lands and hereditaments specified in the schedule thereunder written and coloured pink in the map thereunto annexed (of which schedule and map the schedule and map hereunder written and hereunto annexed are respectively copies), and also what further sum of money (if any) ought to be paid by the company as or by way of compensation for or in respect of the damage (if any) to be sustained by the owner of the said lands and hereditaments by reason of the severing of the same lands and hereditaments from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise by the company of the powers of their Act or any Act incorporated therewith: NOW KNOW YE, that I, the said A. B., having taken upon myself the burthen of the said reference, and having, before entering into the consideration of the matters referred to me as aforesaid, duly made and subscribed in the presence of a justice duly authorised in that behalf the declaration required by the said Lands Clauses Consolidation Act, 1845 (which said declaration is hereunto annexed), and having viewed the lands and hereditaments herein-after mentioned or referred to, and having heard what was alleged by or on behalf of the said parties respectively, and having heard and considered all such evidence as hath been produced before me,

Recite  
 agreement  
 to refer  
 matter to  
 arbitration.

Award of  
 arbitrator.



AWARD AS  
TO COMPEN-  
SATION FOR  
LAND  
TAKEN BY A  
RAILWAY  
COMPANY.

and having duly weighed and considered all and singular the matters and things to me referred as aforesaid, Do make and publish this my award in writing of and concerning the said matters, as follows (that is to say): I DO AWARD AND DETERMINE that the sum of £—— ought to be paid by the company for the purchase of the inheritance in fee simple of the said lands and hereditaments, and that the further sum of £—— ought to be paid by the company as or by way of compensation for or in respect of the damage to be sustained by the owner of the said lands and hereditaments by reason of the severing of the same from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise by the company of the powers of their Act or any Act incorporated therewith.

·IN WITNESS, &c.

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THE SCHEDULE ABOVE REFERRED TO.

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No. XXI.

WAIVER OF  
RIGHT OF  
ACTION FOR  
PAST  
BREACH OF  
COVENANT.

DEED of ARRANGEMENT for WAIVING a RIGHT of ACTION for the PAST BREACH of a COVENANT, and for extending-the time for its PERFORMANCE (by indorsement).

Parties.

Recite that grantee has failed to perform covenant to build three messuages within a given time, and that he has requested covenantee to extend the time.

Agreement by covenantee to comply with such request.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. of the one part, and the within-named C. D. of the other part: WHEREAS the said C. D. has failed to perform the covenant on his part contained in the within-written indenture for the erection and completion before or on the —— day of —— of a good and substantial messuage or dwelling-house on each of the three several plots of ground comprised in the within-written indenture; and he has requested the said A. B. to extend the time for the erection and completion of the same messuages or dwelling-houses to the —— day of ——, which the said A. B. has agreed to do upon the said C. D. entering into the covenant hereinafter contained: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the waiver by the said A. B. of his present right

of action for the breach of the aforesaid covenant, he the said C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors, administrators, and assigns, that he the said C. D., his executors, administrators or assigns, will, on or before the — day of —, at his own expense and in a good and workmanlike manner, and to the satisfaction of the said A. B., his executors, administrators, or assigns, or of his or their architect, erect and build and completely finish fit for habitation on each of the said three several plots or parcels of ground comprised in and demised by the within-written indenture a good and substantial messuage or dwelling-house conformably to the plan already signed by the said A. B. and C. D., and in the positions shown thereon, and a copy of which plan is indorsed on the within-written indenture, and also conformably to an elevation, to be signed and approved of by the said A. B., his executors, administrators, or assigns, before the said C. D., his executors, administrators, or assigns shall proceed to erect any of the said messuages or dwelling-houses: AND IT IS HEREBY AGREED AND DECLARED, that all and singular the covenants by the said C. D. contained in the within-written indenture which relate to the messuages or dwelling-houses to be erected in pursuance of the covenant therein contained for the erection and completion thereof shall be read and construed as in every respect applicable to the messuages or dwelling-houses which shall be erected in pursuance of the covenant hereinbefore contained: and that except so far as the same is expressly varied by these presents, the within-written indenture and everything therein contained shall remain in full force and effect.

IN WITNESS, &c.

WAIVER OF  
RIGHT OF  
ACTION FOR  
PAST  
BREACH OF  
COVENANT.

Covenant  
by grantee  
to build a  
messuage  
on each of  
these plots  
before a  
certain day  
conformably  
to plan.

Covenants  
in grant to  
be applic-  
able to  
messuages  
to be  
erected.

Grant to  
remain in  
force,  
except as  
varied by  
this deed.

## No. XXII.

UNDERLEASE  
OF PART OF  
LAND COM-  
PRISED IN  
ORIGINAL  
LEASE, WITH  
SPECIAL  
STIPULA-  
TIONS.

---

UNDERLEASE of a PART of the PROPERTY comprised  
in the ORIGINAL LEASE; COVENANTS by LESSOR in  
the event of his PURCHASING REVERSION in FEE  
SIMPLE, or obtaining a RENEWED LEASE, to SELL  
such REVERSION or to grant a RENEWED LEASE to  
the SUB-LESSEE.

Parties.

Recite  
original  
lease.

Agreement  
to grant  
underlease  
of part of  
property  
comprised  
in original  
lease.

THIS INDENTURE, made the —— day of ——, BETWEEN  
A. B. of, &c. (*lessor*), of the one part, and C. D. of, &c. (*lessee*),  
of the other: WHEREAS by an indenture of lease dated the ——  
day of ——, and made between the Dean and Chapter of ——,  
of the one part, and the said A. B. of the other part, for the  
considerations therein mentioned, All that piece or parcel of  
land (*here describe the piece of land as described in the lease*),  
and the appurtenances, were demised unto the said A. B., his  
executors, administrators, and assigns, from the —— day of  
—— then last past, for the term of twenty-one years, at the  
yearly rent of £——, and under and subject to the covenants  
and conditions in the said indenture of lease contained, and on  
the part of the lessee, his executors, administrators, and assigns,  
to be observed and performed: AND WHEREAS the said A. B.  
hath agreed with the said C. D. for the demise to him of the  
piece of land hereinafter described and intended to be hereby  
demised (being part of the said piece of land comprised in the  
said recited indenture of lease), for the unexpired residue of  
the said term of twenty-one years (wanting the last ten days  
thereof), upon the terms hereinafter mentioned: NOW THIS  
INDENTURE WITNESSETH, that in pursuance of the said  
agreement, and in consideration of the sum of £—— to the  
said A. B. paid by the said C. D. on or before the execution of  
these presents, the receipt whereof the said A. B. doth hereby  
acknowledge, and in consideration of the rent and covenants  
hereinafter reserved and contained, and on the part of the said  
C. D., his executors, administrators, and assigns, to be paid,  
observed, and performed, He the said A. B. doth hereby demise  
unto the said C. D., his executors, administrators, and assigns,

ALL THAT piece or parcel of land (*here describe the land to be underlet*), and the appurtenances thereunto belonging: TO HAVE AND TO HOLD the piece or parcel of land and premises hereby demised, or expressed so to be, unto the said C. D., his executors, administrators, and assigns, for all the residue now unexpired of the said term of twenty-one years created by the said recited indenture of lease as aforesaid (except the last ten days of the said term), YIELDING AND PAYING therefor yearly and every year during the said term unto the said C. D., his executors, administrators, and assigns, the rent of 1s., and under and subject to the covenants and conditions hereinafter contained and on the part of the said C. D., his executors, administrators, and assigns, to be observed and performed: AND THE SAID C. D. doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said A. B., his executors, administrators, and assigns, that he the said C. D., his executors, administrators, and assigns, will, &c. (*Covenants by sub-lessee, corresponding with the covenants contained in the recited lease—power of re-entry in case rent shall be in arrear or covenants shall be broken—covenant by lessor for quiet enjoyment*): PROVIDED ALWAYS, and it is hereby declared, that in case the said A. B., his executors, administrators, or assigns, at any time hereafter during the continuance of the term hereby granted, or of any renewed lease which may be granted of the premises hereby demised under the provision hereinafter for this purpose contained, shall purchase the fee simple and inheritance of the premises comprised in the hereinbefore recited indenture of lease, or of any portion of the same premises which shall include the premises hereby demised, the said C. D., his executors, administrators, or assigns, shall immediately thereafter be regarded as the purchaser or purchasers of the fee simple and inheritance of the lands hereby demised, at the price which he the said A. B., his executors, administrators, or assigns, shall have paid for such fee simple if the fee simple of such premises shall be the sole subject of his purchase, but in the event of other property being included in such last-mentioned purchase, then at such a price as shall be equal to a *pro rata* proportion of the purchase-money which shall be paid by the said A. B., his executors, administrators, or assigns, for the whole of the premises to be comprised in such last-mentioned purchase, and that the sum so to be paid in the event last

UNDERLEASE  
OF PART OF  
LAND COM-  
PRISED IN  
ORIGINAL  
LEASE, WITH  
SPECIAL  
STIPULA-  
TIONS.

Sub-demise  
of parcels,  
to sub-lessee  
for original  
term (want-  
ing ten  
days).

Covenants  
by sub-  
lessee.

Declaration  
by sub-  
lessor  
that in the  
event of his  
purchasing  
reversion  
in fee  
simple he  
will convey  
same term  
to sub-lessee  
on certain  
terms.

UNDERLEASE  
OF PART OF  
LAND COM-  
PRISED IN  
ORIGINAL  
LEASE, WITH  
SPECIAL  
STIPULA-  
TIONS.

Proviso  
that sub-  
lessee in  
such case  
shall accept  
title ac-  
cepted by  
sub-lessor,

and shall  
not require  
evidence  
not in pos-  
session of  
sub-lessor,

and that  
documents  
relating to  
any other  
property  
of lessor  
shall be  
retained by  
him, and  
that he will  
covenant  
for their  
production.

Declaration  
that if sub-

hereinbefore contained shall in case of dispute be settled by two referees, one to be chosen by the said A. B., his executors, administrators, or assigns, and the other to be chosen by the said C. D., his executors, administrators, or assigns, and in case of their disagreement, by an umpire to be chosen by such two persons, but if either party shall neglect or refuse to appoint a referee within ten days after notice shall have been given to him by the other party so to do, then the referee appointed by such other party shall make a final decision alone: AND IT IS HEREBY DECLARED that the said A. B. shall deliver to the said C. D., his executors, administrators, and assigns, an abstract of his title to the premises so to be purchased by the said C. D., his executors, administrators, or assigns, within one calendar month after the completion of the purchase by the said A. B., and that the purchase-money so to be paid by the said C. D., his executors, administrators, or assigns, as aforesaid, shall be paid within two calendar months from and after the completion of such purchase by the said A. B., his executors, administrators, and assigns, as aforesaid, and on the payment of such purchase-money as aforesaid, the said A. B., his executors, administrators, or assigns, shall execute an assurance to the said C. D., his executors, administrators, or assigns, of the fee simple so to be purchased by him or them of the premises hereby demised: PROVIDED ALWAYS, that the said C. D., his executors, administrators, or assigns, shall accept such title to such fee simple as aforesaid as the said A. B., his executors, administrators, or assigns, on the occasion of his purchase, shall have accepted, and shall not make any objection on account thereof, and that the said A. B., his executors, administrators, or assigns, shall not be required to produce, supply, or procure the production of any document of title, or evidence other than such as may be in the actual possession of the said A. B., his executors, administrators, or assigns, at the date of his sale to the said C. D., and that in case any such documents shall relate to other property of the said A. B., his executors, administrators, or assigns, he or they shall retain all such documents, and shall enter into a covenant with the said C. D., his executors, administrators, or assigns, for their production, every such deed of assurance and deed of covenant as aforesaid to be prepared by and at the expense of the said C. D., his executors, administrators, or assigns: PROVIDED ALWAYS, and it is hereby also

declared, that in case at any time hereafter during the continuance of the term hereby granted, the said A. B., his executors, administrators, or assigns, shall obtain a new or renewed lease of the premises comprised in the hereinbefore recited indenture of lease, or of any portion of the same premises which shall include the premises hereby demised, he the said A. B. his executors, administrators, or assigns, shall upon the surrender by the said C. D., his executors, administrators, or assigns, of the term hereby granted, grant at the cost of the said C. D., his executors, administrators, or assigns (so far as the said A. B., his executors, administrators, or assigns, can or lawfully may), a new lease to the said C. D., his executors, administrators, or assigns, of the premises hereby demised, for the residue of the term therein so to be granted to the said A. B., his executors, administrators, or assigns (wanting the last ten days of such term), at the rent of 1s. per annum, and so that such lease shall be granted on such terms and subject to such covenants, provisoes, and stipulations as shall in all respects correspond with the terms, covenants, and provisoes contained in the new or renewed lease so to be granted to the said A. B., his executors, administrators, or assigns, except that instead of the said C. D., his executors, administrators, or assigns, paying on such occasion the sum of £— by way of premium as aforesaid, he or they shall immediately before the execution of the new lease which may be so granted to him or them pay to the said A. B., his executors, administrators, or assigns, the fine or premium which the said A. B., his executors, administrators, or assigns, shall have paid on the occasion of the new or renewed lease so to be granted to him or them as aforesaid, and also the costs of the renewal of such new or renewed lease of the premises comprised in such last-mentioned lease if such premises should be the sole subject of the purchase, but in the event of other property being included in such last-mentioned lease, then a *pro rata* proportion of the fine or premium and costs of renewal which shall be paid by the said A. B., his executors, administrators, or assigns for the whole of the premises to be comprised in such last-mentioned lease, such proportion in case of dispute to be settled by two referees or their umpire in manner hereinbefore mentioned.

IN WITNESS, &c.

UNDERLEASE  
OF PART OF  
LAND COM-  
PRISED IN  
ORIGINAL  
LEASE, WITH  
SPECIAL  
STIPULA-  
TIONS.

lessor shall  
obtain a  
renewed  
lease, he  
will grant a  
renewed  
lease to  
sub-lessee.

## No. XXIII.

MUTUAL  
COVENANTS  
AND POWERS  
TO SECURE  
PAYMENT OF  
PROPORTION-  
ATE PART OF  
RENT-  
CHARGE.

DEED containing MUTUAL COVENANTS and MUTUAL POWERS of DISTRESS and ENTRY by several PURCHASERS for INDEMNIFYING each of them against the PAYMENT of more than his PROPORTIONATE PART of a YEARLY RENT which is CHARGED on ALL the LANDS.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B. of, &c. (*one of the four purchasers*), of the first part, C. D. of, &c. (*another of the four purchasers*), of the second part, E. F. of, &c. (*another of the four purchasers*), of the third part, and G. H. of, &c. (*the other of the four purchasers*), of the fourth part : (*Recite indenture whereby a piece of land situate, &c., and therein particularly described, was granted by L. M. to N. O., his heirs and assigns, reserving a yearly rent charge of £5 to L. M., his heirs and assigns, and subject to the covenant that N. O. should build four messuages or dwelling-houses on the said piece of land within a given time and according to a plan, &c.*) : AND WHEREAS, pur-

That four houses have been built on the land pursuant to covenant.

Sale of the messuages at apportioned parts of the rent and covenants.

Particulars of premises, dates of conveyances, and amount of apportioned rents contained in schedule.

On the treaty for sale, agreement that purchasers should enter

suant to the covenant in that behalf contained in the said recited indenture as aforesaid, the said N. O. erected four messuages or dwelling-houses on the said piece of land comprised in the said indenture : AND WHEREAS the said N. O. has lately sold and conveyed the said several messuages and premises to the several persons parties hereto at and under apportioned parts of the said yearly rent of £5, and subject to the covenants and conditions contained in the said recited indenture, and on the grantee's part to be observed and performed so far as the same relate to the said premises respectively : AND WHEREAS the short particulars of the several premises so respectively sold and conveyed to the several persons parties hereto as aforesaid, the dates of their respective conveyances and the amount of the apportioned yearly rents reserved thereby respectively are respectively set forth opposite to the names of the several persons parties hereto in the schedule hereunder written : AND WHEREAS upon the treaty for the aforesaid sales it was agreed that the several persons parties hereto should enter into such mutual covenants and grant such mutual powers

of distress and entry as are hereinafter contained : NOW THIS INDENTURE WITNESSETH, that in pursuance of the aforesaid agreement, and in consideration of the premises, each of them the said several persons parties hereto doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the others of them respectively, and their respective heirs, executors, administrators, and assigns, in manner following, that is to say, THAT each of the several persons parties hereto, his heirs and assigns, shall henceforth for and in respect of the premises conveyed to him and them as aforesaid, pay the apportioned yearly rent set opposite to his name in the fourth column of the schedule hereunder written, and duly observe and perform the covenants contained in the said recited indenture of the — day of —, and on the grantee's part to be observed and performed so far as the same relate to the last-mentioned premises, and shall at all times hereafter keep indemnified the other parties hereto, and their respective heirs, executors, administrators, and assigns, and every of them, from and against all actions, proceedings, claims, and demands whatsoever, for or by reason or on account of the non-payment of the said apportioned rent, or any part thereof, or any breach of the said covenants so far as the same relate to the last-mentioned premises: AND FURTHER, that if any of the parties hereto, his heirs or assigns, shall at any time or times hereafter be required to pay more than his or their due proportion of the said yearly rent of £5, and shall pay the same accordingly, or shall sustain or incur any costs, charges, damages, or expenses whatsoever, for or by reason or on account of any default by any other of the parties hereto, his heirs or assigns, in the payment of the rent or in the observance or performance of the covenants which he or they ought to pay, observe, or perform under the covenants hereinbefore contained, then and so often as the same shall happen, it shall be lawful for the party making such payment or sustaining or incurring such costs, charges, damages, or expenses as aforesaid, into and upon all or any part of the premises mentioned in the schedule hereto opposite to the name of the party who or whose heirs or assigns shall have made such default as aforesaid, to enter and distrain for such excess of rent, costs, charges, damages, or expenses as aforesaid, and to dispose of the distress or distresses then and there found according to law as landlords may upon rents reserved upon leases for years, to the

MUTUAL  
COVENANTS  
AND POWERS  
TO SECURE  
PAYMENT OF  
PROPORTION-  
ATE PART OF  
RENT-  
CHARGE

into mutual  
covenants  
and grant  
mutual  
powers of  
distress and  
entry.

Each of the  
purchasers  
covenants  
with the  
others  
that he will  
pay appor-  
tioned rent  
set opposite  
his name in  
schedule,  
and observe  
covenants  
that relate  
to premises  
conveyed  
to him,  
and that he  
will indem-  
nify the  
others  
against such  
apportioned  
rent and  
covenants,  
and that the  
other  
parties shall  
be at liberty  
to enter and  
distrain on  
premises  
conveyed to  
underlessee  
in respect of  
any loss  
arising from  
default by  
him.



MUTUAL  
COVENANTS  
AND POWERS  
TO SECURE  
PAYMENT OF  
PROPORTION-  
ATE PART OF  
RENT-  
CHARGE.

intent that he and they may be thereby fully repaid and satisfied all such excess of rent, costs, charges, damages, and expenses aforesaid, and also (if he or they shall think fit so to do) to enter into or upon all or any part of the last-mentioned premises, and to remain in possession thereof, and receive the rents and profits thereof until he or they shall be fully repaid and satisfied all such excess of rent, costs, charges, damages, and expenses as aforesaid.

IN WITNESS, &c.

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THE SCHEDULE ABOVE REFERRED TO.

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No. XXIV.

DEED OF  
REVOCATION  
AND NEW  
APPOINT-  
MENT.

DEED of REVOCATION and NEW APPOINTMENT for the purpose of APPOINTING Two new TRUSTEES of the original SETTLEMENT, and giving ONE of the DONEES of the power a RIGHT to CHARGE the PROPERTY with a given SUM and INTEREST.

Recite.  
settlement  
of heredita-  
ments.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B. of, &c., and C. D. of, &c. (*donees of power*), SEND GREETING: WHEREAS by an indenture of settlement, dated, &c., and made between the said A. B. and C. D. of the first part, E. F. and G. H., therein respectively described, of the second part, and L. M. and N. O., therein respectively described, of the third part, certain messuages and lands situate at —, and containing together — acres, with the appurtenances, were granted by the said A. B. and C. D. to the uses, upon the trusts, and with and subject to the powers and provisions by and in the said indenture of settlement limited, declared and contained concerning the same, including a power enabling the said A. B. to charge the same hereditaments with the sum of £300 and interest as therein is mentioned: AND it was by the indenture now in recital declared that it should be lawful for the said A. B. and C. D. jointly, at any time or times, by any deed or deeds, to revoke and make void all or any of the uses, trusts, powers and provisions thereinbefore limited, declared, and contained of and concerning the hereditaments and premises thereinbefore granted, or expressed so to be, or any of them, or any part or parts thereof, and by the same or any other deed or

Power to  
one of  
donees of  
power to  
charge  
lands with  
a certain  
sum.  
Power of  
revocation  
and new  
appoint-  
ment.

deeds jointly to declare such new or other uses, trusts, powers, and provisions of and concerning the premises to which such revocation should apply as they should think proper: AND WHEREAS the said A. B., in pursuance of the power limited to him in that behalf as aforesaid, did by an indenture, dated, &c., charge all the said hereditaments comprised in the said recited indenture of settlement, with the payment of the sum of £300 and interest as therein mentioned to O. P. of, &c.: AND WHEREAS in the years — and — respectively several plots of land being part of the hereditaments comprised in the said recited indenture of settlement, and containing together — acres or thereabouts, were sold as appears by a memorandum indorsed thereon: AND WHEREAS the said E. F. hath departed this life: AND WHEREAS the said A. B. and C. D. are desirous to substitute W. X. of, &c., and Y. Z. of, &c., to be trustees in the place of the said E. F. and G. H., and also to limit or create a power enabling the said C. D. to charge the hereditaments now remaining subject to the uses of the said indenture of settlement with a further sum of money in the manner hereinafter expressed: NOW THESE PRESENTS WITNESS, that in order to effect the aforesaid desire, and in pursuance of the power of revocation reserved or limited to them the said A. B. and C. D. as aforesaid, and of every other power in anywise enabling them in this behalf, THEY the said A. B. and C. D. do hereby (but subject and without prejudice to the charge created by the said A. B. as aforesaid, and the sales so made as aforesaid, and any leases which have been granted pursuant to the power of leasing contained in the said indenture of settlement) jointly revoke, determine, and make void all the uses, trusts, powers, and provisions in and by the same indenture of settlement limited, declared, and contained of and concerning such of the hereditaments thereby granted, or expressed so to be, as now remain unsold, or such of the said uses, trusts, powers, and provisions as are now subsisting and capable of taking effect: AND THESE PRESENTS FURTHER WITNESS, that in order further to effect the aforesaid desire, and in pursuance of the power of new appointment reserved or limited to them the said A. B. and C. D. as aforesaid, and of all other powers (if any) in anywise enabling them in this behalf, THE SAID A. B. and C. D. do hereby direct and appoint that all such of the hereditaments granted by the said indenture of settlement as now remain un-

DEED OF  
REVOCATION  
AND NEW  
APPOINT-  
MENT.

Hereditaments charged with sum pursuant to power in settlement.

Sale of part of hereditaments comprised in settlement.

Death of one of trustees of settlement.

Desire of donees of power to substitute two other trustees, and to give power to other donees to charge hereditaments with an additional sum.

Donees of power (subject to charge and past sales and leases) revoke uses,

and appoint hereditaments

DEED OF  
REVOCATION  
AND NEW  
APPOINT-  
MENT.

ments not  
sold to uses  
as if two  
new trustees  
now ap-  
pointed  
had been  
originally  
appointed.

Further  
appoint-  
ment by  
donees  
that (sub-  
ject as  
aforesaid)  
one of the  
donees of  
the power  
shall have  
power to  
charge here-  
ditaments  
with a given  
sum, and to  
appoint  
heredita-  
ments for  
a term for  
securing  
same.

Power of  
revocation  
and new  
appoint-  
ment,  
subject to  
charge  
which may  
be created  
under afore-  
said power.

sold, shall henceforth go, remain, and be To the uses, upon the trusts, and with and subject to the powers and provisions to, upon, with, and subject to which the same hereditaments would now stand limited in case the said W. X. and Y. Z. had been in the same indenture of settlement named as trustees thereof instead of the said E. F. and G. H., and the estates and powers thereby limited to the said E. F. and G. H., their heirs, executors, administrators, and assigns respectively, had been thereby limited to the said W. X. and Y. Z., their heirs, executors, administrators, and assigns respectively, except the power of charging thereby limited to the said A. B., and which hath been exercised as aforesaid, and subject also to the powers hereinafter reserved or contained: PROVIDED ALWAYS, and the said A. B. and C. D. do hereby further appoint and declare that notwithstanding any of the uses and trusts hereinbefore limited and declared and in preference thereto, but subject and without prejudice to the aforesaid charges in favour of the said O. P., it shall be lawful for the said C. D. solely at any time or times, by any deed or deeds, with or without power of revocation and new appointment, to charge all or any of the hereditaments comprised in the said indenture of settlement and now remaining unsold, with the payment to any person or persons whomsoever of any sum or sums of money not exceeding altogether the sum of £100, and the costs of charging and raising the same and interest for the same after the rate of £4 per cent. per annum, and to limit and appoint the hereditaments to be charged therewith to any person or persons for any term or terms of years so that the estate so to be limited or created shall be made subject to redemption on payment by the person or persons who shall be entitled to the reversion of the same hereditaments immediately expectant on the determination of the same term or terms of the sum or sums to be charged as aforesaid, and the interest thereof: PROVIDED ALWAYS, and the said A. B. and C. D. do hereby lastly appoint and declare that it shall be lawful for the said A. B. and C. D. jointly at any time or times by any deed or deeds (but subject and without prejudice to any charge which shall be created by the said C. D. as aforesaid), to revoke, annul, and make void all or any of the uses, trusts, powers, and provisions hereinbefore expressly and by reference limited, declared and contained of and concerning the hereditaments and premises hercinbefore appointed, or expressed so to be, or any

of them, or any part or parts thereof, and by the same or any other deed or deeds jointly to limit and declare such new or other uses, trusts, powers, and provisions of and concerning the hereditaments to which such revocation shall apply as they shall think proper.

DEED OF  
REVOCATION  
AND NEW  
APPOINT-  
MENT.

IN WITNESS, &c.

### No. XXV.

#### PRESENTATION *to a* BENEFICE (a).

PRESENTA-  
TION TO A  
BENEFICE.

TO THE RIGHT REVEREND FATHER IN GOD, —, by Divine permission, Lord Bishop of —, or to his Vicar, general or spiritual, or to any other person having or that shall have sufficient authority in this behalf, I, A. B. of, &c., the true and undoubted patron of the rectory of —, in the county of —, within your lordship's diocese and jurisdiction, DO HEREBY PRESENT to your lordship, and to the said rectory of — aforesaid, now become vacant by the death of the Rev. C. D., clerk, the last incumbent thereof, and to my presentation in full right belonging, The Rev. E. F., clerk, now of —, in the county of —, humbly praying that your lordship will be graciously pleased to admit and canonically institute him the said E. F. in and to the said rectory of the parish church of — aforesaid, and to invest him with all and singular the property, rights, members, and appurtenants thereunto belonging, and to cause him to be inducted into the real, actual, and corporeal possession thereof, and to do all other things which to your pastoral office may in this case appertain and belong.

Presenta-  
tion to the  
rectory.

IN WITNESS, &c.

### No. XXVI.

#### AGREEMENT *to let* FURNISHED HOUSE, TENANT *to preserve* FURNITURE *in good condition*; LANDLORD *to keep* HOUSE *in repair*.

AGREEMENT  
TO LET  
FURNISHED  
HOUSE.

AN AGREEMENT made this — day of —, 18—, Between A. B., of, &c. (hereinafter called the landlord), of the one part, and

(a) The stamp duties charged by the 33 & 34 Vict. c. 97, on appointments to ecclesiastical benefices, are repealed by the 40 & 41 Vict. c. 13, sec. 13.

Stamps on  
presenta-  
tion.

AGREEMENT  
TO LET  
FURNISHED  
HOUSE.

C. D. of, &c. (hereinafter called the tenant), of the other part ;  
WHEREBY it is agreed as follows :—

Agreement  
to let and  
take house  
and furni-  
ture at  
monthly  
rent.

THE landlord agrees to let and the tenant agrees to take and rent ALL that messuage called —, situate at —, with the garden, grounds, and other appurtenances thereto belonging, and also the furniture, china, goods, chattels, and effects therein as per inventory, signed by both parties, from the — day of — next until the — day of — next AT the rent of £— for every calendar month of the said tenancy, and to be paid on the — day of each month, the first payment to be on the — day of — next:

Agreements  
by tenant.

THE tenant agrees to keep the said furniture properly cleaned and in good condition, and at the end of the tenancy to leave the said messuage and premises, together with the furniture, china, goods, chattels, and effects clean, and in as good state, condition, and repair, as they are at the commencement of the tenancy, or to make compensation for any damage done or for any articles missing, reasonable wear and tear and damage by fire and tempest excepted: THE landlord agrees to

Agreements  
by landlord.

execute all repairs required to the interior and exterior of the said messuage which may be found necessary in the course of reasonable wear, and to pay the ground-rent, rates, and taxes of every description, and to indemnify the tenant therefrom: The tenant is to keep the garden and grounds belonging to the said messuage in good order, repair, and condition during the tenancy, and so to leave the same at the end of the said tenancy: The tenant shall not be at liberty to underlet or part with the possession of the said messuage and furniture or any part thereof respectively to any person not approved of by the landlord: AND it is expressly provided and agreed that if and whenever the said rent, payable as aforesaid, or any part thereof shall be in arrear and unpaid for the space of one week, after the same ought to have been paid, whether the same shall or shall not have been legally demanded, or if and whenever the tenant shall be guilty of any breach of any or either of the terms and agreements herein contained, and on his part to be observed, then and in either of the said cases it shall be lawful for the landlord immediately to re-enter upon and re-possess all the premises (inclusive of the furniture and effects), and to put an end to these presents, and to expel the tenant and all other persons in possession from the said premises.

Power of  
re-entry.

AS WITNESS, &c.

## No. XXVII.

ANTENUPTIAL AGREEMENT *that all PROPERTY of intended WIFE shall belong to her for her SEPARATE USE* (a).

AGREEMENT  
THAT WIFE'S  
PROPERTY  
SHALL BE  
FOR HER  
SEPARATE  
USE.

THIS INDENTURE, made, &c., between A. B., of, &c. (*intended husband*), of the one part, and C. D. of, &c. (*intended wife*), of the other part, WITNESSETH, that in consideration of the marriage which is intended to be shortly solemnized between the said A. B. and C. D., it is hereby agreed and declared between them that all the real and personal estate, as well in possession as in reversion, remainder, expectancy, or otherwise to which the said C. D. is now beneficially entitled, or to which she may become beneficially entitled during the said intended coverture, shall be for her sole and separate use, and at her absolute disposal as if she were a *feme sole*.

IN WITNESS, &c.

## No. XXVIII.

CONVEYANCE of a SCHOOLHOUSE by the MANAGERS of an ELEMENTARY SCHOOL to a SCHOOL BOARD, under Section 23 of the ELEMENTARY EDUCATION ACT, 1870.

CONVEYANCE  
OF SCHOOL  
HOUSE TO  
SCHOOL  
BOARD.

THIS INDENTURE, made the — day of —, 18—, BETWEEN A. B. of, &c., C. D. of, &c., E. F. of, &c., G. H. of, &c., J. K. of, &c., L. M. of, &c., O. P. of, &c. (being the majority of the trustees of a certain charity called L— Charity and competent as such to act and for the purposes of these presents acting as the managers of the said charity) of the one part, and the School Board for — (hereinafter called "the Board") of the other part: WHEREAS M. L., late of —, deceased, by her will, bearing date the — day of —, and which was duly

Parties.

Recital of  
will of  
founder of  
school.

(a) This precedent should properly be among the settlements. It is intended to carry out what is sometimes the wish of both parties to have no trustees and to leave the wife the absolute control over her property.

CONVEYANCE  
OF SCHOOL  
HOUSE TO  
SCHOOL  
BOARD.

Scheme  
approved by  
the Court of  
Chancery  
for the  
administra-  
tion of the  
charity.

Order of  
Charity  
Commis-  
sioners  
appointing  
trustees.

That trus-  
tees are  
seised of  
schoolhouse.

That schools  
have been  
maintained  
partly out  
of their own  
funds, and

proved in the Prerogative Court of Canterbury, on the — day of — in the same year, bequeathed certain leasehold premises therein mentioned unto certain trustees in her said will named upon trust to apply the annual income thereof in the bringing up, instructing, and educating in the principles of the Christian religion as the same was then taught, professed, and practised in the Established Church of England, 40 poor children—namely, 20 boys and 20 girls of the said parish of —, and that the said trustees, or the major part of them, should choose and nominate the children to be from time to time entitled to the benefit of the said charity: AND WHEREAS by a scheme annexed to a decree of the High Court of Chancery, made in a suit instituted in the said Court for the administration of the trusts of the said charity, in which suit —, churchwardens of — aforesaid, and —, overseers of the poor of the said parish, on behalf of themselves, and 20 poor boys and 20 poor girls, were plaintiffs and — were defendants, and which scheme was confirmed by the Lord Chancellor on the — day of — it was (among other things) provided that the trustees for the time being of the said charity, or the major part of them, should from time to time visit the schools of the said charity, elect the objects thereof, and appoint the schoolmasters and schoolmistresses of the same schools, and should, as often in any year as they might think proper, meet at the schoolhouse and examine into the conduct and behaviour of the masters and mistresses, and of such poor children, and see the state and condition of the said school, and consult of proper measures to be taken in and about the performing and executing their said trust, and render accounts thereof: AND WHEREAS by an order of the Board of Charity Commissioners for England and Wales bearing date the — day of —, it was ordered that the said several persons, parties hereto of the first part, together with (*other trustees*), be appointed to be trustees for the administration of the said charity: AND WHEREAS the trustees of the said charity are seised or entitled in fee simple as part of the property of the said charity, of or to the schoolhouses and premises, situate at — aforesaid hereinafter described, and hereby assigned, or intended so to be, subject to the payment of a yearly fee farm or ground rent of £2: AND WHEREAS the schools established by the said charity have been maintained and supported in part by the funds of the said charity; and in

further part by the voluntary subscriptions of persons residing in or in the neighbourhood of — aforesaid ; and in further part by an annual grant out of funds appropriated by Parliament for Public Education in Great Britain: AND WHEREAS at a meeting of trustees of the said charity, held at the schoolhouse at — aforesaid, on the — day of — last, in pursuance of a notice for that purpose duly given, by affixing the same against the door of the parish church, at —, and by a post letter addressed to each of the trustees of the said charity, and which notice was dated the — day of —, and which meeting was attended by all the trustees of the said charity, except the said — It was (amongst other things) resolved by a majority of the trustees present at such meeting, and which majority was constituted of the several persons parties hereto of the first part, that in consequence of the falling off of the subscribers to the said schools and the inadequacy of the funds within the control of the trustees efficiently to maintain and support the said schools, it would be for the benefit of all persons interested in the said charity, that the said schoolhouse should be transferred to the School Board of the parish, reserving to the trustees the exclusive use of the school rooms for the purposes of their trusts, on every Sunday, and also between the hours of 9 and 9.45 in the morning on every Friday in each year, the Board undertaking the repairs and insurance against fire of the school premises, and paying the ground rent in respect of the same: AND WHEREAS on the — day of — the said proposed arrangement for the transfer to the said Board of the said schoolhouses, received the consent of twenty-five, being all of the annual subscribers to the said schools, who were present at a meeting duly summoned and voted on the question, and also received the consent of the Education Department on the — day of —, and the same arrangement was afterwards, in the terms of the said resolution, embodied in certain articles of agreement, bearing date the — day of —, and made between, &c. (*parties*): NOW THIS INDENTURE WITNESSETH, that for carrying into effect the said arrangement in relation to the said schoolhouses, and pursuant to and in exercise of the powers and authorities for that purpose conferred by the Elementary Education Act, 1870, THE said several persons parties hereto of the first part, in the character of managers of the said schools, do hereby grant unto the said Board and their successors: ALL THOSE the school-

CONVEYANCE  
OF SCHOOL  
HOUSE TO  
SCHOOL  
BOARD.

partly by  
subscriptions  
and partly by  
government  
grant.

Meeting of  
trustees,  
and resolution  
to transfer  
school house  
to board.

That proposed transfer was consented to by all the subscribers and by Education Department.

Witnessing part, managers convey school houses.



CONVEYANCE  
OF SCHOOL  
HOUSE TO  
SCHOOL  
BOARD.

To the  
Board.  
To the  
intent that  
they shall  
pay the  
ground  
rent, and  
keep the  
premises in  
repair and  
insured.

And subject  
thereto to  
the intent  
that trustees  
of the  
charity may  
have use of  
premises on  
Sundays  
and during  
certain  
hours on  
every  
Friday.

And subject  
thereto that  
same may  
be a school  
provided by  
board  
within the  
Act.

houses situate at — aforesaid, now or lately used for the purposes of the said charity, together with the yard, play-grounds, outbuildings, and other the premises to the same belonging, which said schoolhouses, play-grounds, and other premises, are delineated in the plan drawn in the margin of these presents, and are distinguished thereon by the colour pink, and the same have been erected upon and formed out of a certain piece of land, which was in the year — conveyed to the trustees of the said charity, by one H. S. by the description following (namely), All that, &c. (*describe land*), TOGETHER with the rights, easements, and appurtenances to the same belonging or therewith usually held or enjoyed: AND ALL THE estate, right, title, and interest of the said several persons parties hereto of the first part, or which it is competent for them, under or by virtue of the said Act, to convey and assure of and in the said premises, To hold the said premises (subject to the said yearly fee farm rent of £2 payable thereout) unto and to the use of the Board and their successors: To and for the intents and purposes following (namely): To the intent and purpose that the Board shall from time to time hereafter out of the funds under their control pay the said rent payable in respect of the said premises, and keep the said schoolhouses and premises, and the fences separating the same from the adjoining properties, in good repair, and the buildings insured against loss or damage by fire in a sum equal to the value thereof, in some respectable office of insurance, to be selected by the Board, and approved of by the trustees or trustee for the time being of the said charity, or such of them as shall be competent to act in the execution of the trusts of the said charity, and subject as aforesaid: To the intent and purpose that the trustees or trustee for the time being of the said charity may have the exclusive use of the said schoolhouses, for the purposes of their trust, on every Sunday in each year, and also between the hours of 9 and 9.45 in the morning of every Friday in every year, and subject as aforesaid: To the intent and purpose that the said schoolhouses and premises may be deemed to be a school provided by the Board within the meaning of the Elementary Education Act, 1870.

IN WITNESS, &c.

## No. XXIX.

MEMORANDUM *and* ARTICLES of ASSOCIATION of a  
JOINT-STOCK COMPANY, LIMITED, *formed under the*  
COMPANIES ACTS, 1862 and 1867 (a).

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

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## MEMORANDUM OF ASSOCIATION.

1st. The name of the company is "The — Land Investment Company (Limited)."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are :—  
The acquisition by purchase, lease, or otherwise, of lands, houses, and property, in England and Wales.

The erection of houses and buildings on any land of the company ; the enlargement, alteration, and improvement of existing houses and buildings thereon, the converting and appropriating of any such land into and for roads, streets, gardens, pleasure-grounds, and other conveniences and the general improvement of the property of the company.

The selling, leasing, mortgaging, and otherwise disposing of the lands, houses, and other property of the company.

The manufacturing, buying, and selling of bricks, tiles, brick-earth, slates, chalk, sand, and other building materials.

The borrowing of money, the receiving of money on deposit, and the issue of transferable and other bonds, or mortgage debenture, or any other securities, founded or based upon all or any of the real or personal assets or credit of the company.

The transacting and doing of all such matters and things as shall be conducive or incidental to the above objects, or any of them.

(a) 25 & 26 Vict. c. 89 ; 30 & 31 Vict. c. 131.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

4th. The liability of the members is limited.

5th. The nominal capital of the company is £——, divided into —— shares of £—— each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Shareholders.	No. of Shares taken by each Subscriber.

Dated the —— day of ——, 18—

Witness to the above signatures,

#### ARTICLES OF ASSOCIATION.

It is agreed as follows:

Table A  
not to  
apply.

1. The regulations contained in the table marked A in the first schedule to "The Companies Act, 1862," shall not apply to this company, except so far as the same may be repeated, embodied, or contained in these articles.

Interpreta-  
tion clause.

2. In the construction of the Memorandum and Articles of Association, unless the contrary be expressed, or is to be inferred from the context,

Words signifying the singular number only shall include the plural, and vice versâ.

Words signifying males only shall extend to and include females :

Words signifying persons shall apply, *mutatis mutandis*, to corporations ;

The word " month " shall mean " calendar month ;"

The words " special resolution " shall mean a special resolution passed in accordance with section 51 of " The Companies Act, 1862."

MEMO-  
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AND  
ARTICLES  
OF ASSOCIA-  
TION.

### *Capital and Shares.*

3. The capital of the company shall be £——, divided into ——— shares of £— each. Capital.

4. The directors may at first issue not less than one third of the capital, and may at any time or times afterwards issue the remainder, or any part thereof, to such persons as they shall think fit. Directors may issue part of capital.

5. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share, and on the death of any one or more of such joint holders, the survivors or survivor shall be the only persons recognized by the company as having any title to or interest in such share. Joint holders of shares.

6. Every member shall, on payment of one shilling, or such less sum as the company in general meeting shall prescribe, be entitled to a certificate under the common seal of the company, specifying the shares or share held by him, and the amount paid up thereon. If such certificate be worn out or lost, it may be renewed on payment of one shilling, or such less sum as the company in general meeting may prescribe. Certificates of shares.

### *Calls on Shares.*

7. The directors may require persons applying for shares to pay any sum not exceeding £1 per share, as a deposit on the application for such shares and any further sum not exceeding £1 per share to be paid on the allotment of such shares. And the directors may from time to time make such further calls upon the members, in respect of the amount unpaid on their shares as they shall think fit : Provided that no call shall exceed £1 per share, and that no call be made within three months after the last previous call, and that twenty-one days' notice at Application for shares and calls.

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AND  
ARTICLES  
OF ASSOCIA-  
TION.

Call when  
deemed to  
be made.  
Interest on  
unpaid  
calls.

Directors  
may receive  
shares in  
advance.

least is given of such call. Each member shall be liable to pay the amount of calls so made to the persons, and at the times and places appointed by the company.

8. A call shall be deemed to be made at the time when the resolution of the directors authorising such call was passed.

9. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder of such share shall be liable to pay interest for the same at such rate as the directors shall determine, from the day appointed for the payment thereof, to the time of the actual payment.

10. The directors may, if they think fit, receive from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and upon the moneys so paid in advance, or on so much thereof as from time to time exceeds the amount of the calls then made upon the shares, in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

### *Forfeiture of Shares.*

Directors  
may serve  
notice to  
pay unpaid  
call.

11. If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

12. The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company, or some other place at which calls of the company are usually made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

What the  
notice

13. If requisitions of any such notice as aforesaid are not

complied with, any share in respect of which such notice shall have been given may at any time thereafter before payment of all calls, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

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AND  
ARTICLES  
OF ASSOCIA-  
TION.

should  
state.

If requisitions of notice not complied with, shares may be forfeited by resolution.

Forfeited share may be disposed of by company.

Liability of member whose shares are forfeited.

Declaration that share is forfeited to be conclusive.

14. Any share so forfeited shall be deemed to be the absolute property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

15. Any member whose shares have been forfeited shall, notwithstanding such forfeiture, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

16. A statutory declaration in writing that a share has been duly forfeited in accordance with the Articles of Association, shall be sufficient evidence of the facts therein stated as against all persons claiming to be entitled to such share and such declaration, and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due, prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such forfeiture and sale.

17. The directors may, in their discretion, at any time remit any forfeiture which shall have been incurred either before or after such forfeiture shall have been actually declared, upon such terms and conditions as they may think proper, and thereupon the holder of such shares shall be restored to his full rights in respect of the same shares, and be subject to the same liabilities in relation thereto as if such forfeiture had not been incurred: provided always, that no remission of a forfeiture shall be made after the forfeited shares shall have been sold, nor after twelve calendar months from the declaration of forfeiture, nor so as to prejudice or disturb any dividend which may have been declared.

Directors may remit forfeiture.

### *Transfer of Shares.*

18. Subject to Article 20, a member may transfer all or any of his shares. The instrument of transfer of any share shall be executed both by the transferror and transferee, and the trans-

Transfer of shares.



of the marriage of any female member, or in any other way than by transfer, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

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AND  
ARTICLES  
OF ASSOCIA-  
TION.

24. Any person who shall have become entitled to a share in any other way than by transfer, may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share, provided that if the share is not fully paid up, the person proposed to be registered as a holder thereof shall be first approved of by the directors. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

death,  
bankruptcy,  
or marriage  
of member.  
Any person  
becoming  
entitled  
otherwise  
than by  
transfer  
may elect  
nominee.

25. The instrument of transfer shall be presented to the directors, accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the directors shall register the transferee as a member.

Evidence  
to accom-  
pany in-  
strument of  
transfer.

### *Conversion of Shares into Stock.*

26. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

Directors  
may convert  
paid-up  
shares into  
stock.

27. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares may be transferred, or as near thereto as circumstances admit.

Transfer of  
stock by  
holders.

28. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock, as would not, if existing in shares, have conferred such privileges or advantages.

Participa-  
tion by  
holders of  
stock in  
profits of  
company.



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OF ASSOCIA-  
TION.

Increase of  
capital by  
issue of  
new shares.

New shares  
how to be  
offered.

New shares  
to be con-  
sidered as  
part of  
original  
capital.

First and  
subsequent  
general  
meetings.

Names for  
different  
meetings.

Directors  
may con-

*Increase of Capital.*

29. The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

30. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice, specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given, that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

31. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

*General Meetings.*

32. The first general meeting shall be held at such time, not being more than four months (a) after the registration of the company, and at such place as the directors shall determine. Subsequent general meetings shall be held once a year at least, as may be prescribed by the company in general meeting, and if no other time and place be prescribed a general meeting shall be held on the first Wednesday in May in every year, at such time and place as the directors may appoint.

33. The above-mentioned general meetings shall be called ordinary meetings. All other meetings shall be called extraordinary.

34. The directors may, whenever they think fit, and they shall,

(a) See 30 & 31 Vict. c. 131, sect. 39.

upon a requisition made in writing by members holding in the aggregate one-tenth part or more of the shares in the company for the time being issued, convene an extraordinary general meeting.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

35. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

vene extra-  
ordinary  
general  
meeting on  
receiving  
requisition.

36. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members holding the required number of shares, may themselves convene an extraordinary general meeting.

What requi-  
sition by  
members  
should  
express.  
On receipt  
of requisition,  
directors to  
convene  
extraordi-  
nary meet-  
ing.

*Proceedings of General Meeting.*

37. Seven days' notice, at the least, specifying the place, the day, and hour of meeting, and the purpose for which the meeting is to be held, shall be given, either by advertisement or in such other manner as may be prescribed by the directors; and no business shall be transacted at such meeting other than what is specified in such notice. All business shall be deemed special that is transacted at an extraordinary meeting, and also all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance sheets, and the ordinary report of the directors.

Notice of  
meetings to  
be given by  
directors.

38. No business shall be transacted at any meeting (except the declaration of a dividend) unless ten members be personally present at the commencement of such business.

Ten mem-  
bers must  
be present.

39. If, within one hour from the time appointed for the meeting, the required number of members be not present, the meeting, if convened upon the requisition of members shall be dissolved; in any other case it shall stand adjourned for one week, at the same time and place, and if at such adjourned meeting the required number of members shall not be present, the meeting shall be adjourned *sine die*.

Conse-  
quence of  
requisite  
number not  
being  
present.

40. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company, but if there is no chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, then the deputy chairman (if any) of the board of directors, shall preside at such meeting. If neither the chair-

Chairman of  
board, or in  
his absence  
deputy  
chairman,  
to preside.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

Adjourn-  
ment of  
meeting

How ques-  
tions are to  
be decided.

Proceedings  
if a poll is  
demanded.

Minutes to  
be made in  
books.

Declaration  
by chairman  
that resolu-  
tion has  
been carried  
to be evi-  
dence.

man nor the deputy chairman shall be present within fifteen minutes after the time appointed for such meeting, the members present shall choose some one of their number to be chairman of such meeting.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

42. Every question, except where otherwise provided by "The Companies Act, 1862," or by these regulations, shall be decided by a simple majority of the votes given thereon. Upon all questions a show of hands shall in the first instance be taken, and the question shall be decided by such show of hands, unless upon or immediately after such show of hands a poll shall be demanded in writing by at least five members entitled to vote, but no poll shall be allowed on a question of the adjournment of the meeting.

43. If a poll is demanded as aforesaid, it shall be taken in such manner as the chairman of the meeting shall direct, and he shall have power to adjourn the meeting for a reasonable time for the purpose of taking such poll, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In case the poll be not taken on the day on which it is demanded, notice shall be given of the time and place of taking such poll in the same manner as in the case of an adjourned meeting.

44. Minutes shall be made in books provided for the purpose of all resolutions and proceedings of general meetings, and any such minute if signed by any person purporting to be the chairman of the meeting to which it relates, or to be the chairman of the board of directors, shall be receivable as evidence of the facts therein stated without further proof.

45. A declaration by the chairman of the meeting that a resolution has been carried, and an entry to that effect in the book of proceedings shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution, and whether or not a poll shall be taken thereon. In case of an equality of votes at any general meeting, or upon the result of any poll, the chairman shall have a second or casting vote.

*Votes of Members.*

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

46. Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first one hundred shares.

What votes  
members  
shall have.

47. If any member is a lunatic or idiot, he may vote by his committee, curator bonis, or other legal curator: and if any member be a minor, he may vote by his guardian, tutor, or curator, or any one of his guardians, tutors, or curators, if more than one.

When a member is lunatic, or idiot, or a minor.

48. If two or more persons are jointly entitled to a share, the member whose name stands first in the register of members as one of the holders of such share, and no other, shall be entitled to vote in respect of the same.

Joint  
shares.

49. No member shall be entitled to a vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months from the time of holding the meeting at which he proposes to vote.

No mem-  
ber to vote  
unless all  
calls are  
paid.

50. Votes may be given either personally or by proxy.

Votes may  
be given  
personally  
or by proxy.

51. A proxy shall be appointed in writing under the hand of the appointor, or if such appointor be a corporation, under their common seal, and shall be in the form or to the effect following:—

Proxy to be  
appointed  
in writing.

*"The —— Land Investment Company (Limited)."*

"I                      of                      being a member of the above-named company, and entitled to                      vote or                      votes, hereby appoint                      of                      to be [my] proxy to vote for me and on my behalf at the ordinary [or extraordinary or adjourned, *as the case may be*] general meeting of the company, to be held on the                      day of                      next, and at any adjournment thereof. As WITNESS [my hand] this                      day of                      18—."

52. No person shall be appointed a proxy who is not a member of the company. The instrument appointing a proxy shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the

Only mem-  
bers to be  
appointed  
proxies.

MEMO-  
RANDUM  
AND  
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OF ASSOCIA-  
TION.

meeting at which the person named in such instrument proposes to vote but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

*Directors.*

Number of  
directors.

53. The directors shall not be more than — or less than — in number.

Director  
must hold  
— shares  
to be  
eligible.

When office  
of director  
shall be  
vacated.

54. No person shall be appointed a director unless he holds at least thirty shares, on which all calls for the time being made shall have been fully paid up.

55. The office of director shall be vacated—

If he ceases to hold thirty shares in the company.

If he holds any office or place of profit under the company.

If he becomes bankrupt, compounds with his creditors, or becomes lunatic, or of unsound mind.

If he absents himself from the directors' board meeting for six successive months without the consent of the directors.

If he is concerned in, or participates in the profits of any contract with the company, provided always that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is a director; nevertheless he shall not vote in respect of such contract or work, and if he does so vote his vote shall not be counted.

Notice to  
be left by  
director  
desiring to  
resign.

56. If a director shall desire to resign his office, he shall leave a notice in writing of such his desire at the registered office of the company, and on the acceptance of his resignation by the board, but not before, his office shall be vacant.

Director  
shall resign  
if requested  
to do so by  
all his co-  
directors.

57. If any director shall be requested in writing signed by all his co-directors to resign his office, he shall resign the same accordingly, and if he shall fail so to do for the space of forty-eight hours after he shall receive such request, or after the same shall have been left at his usual or last known place of abode or business, such of his co-directors as may be present at a special board meeting, may remove such director from his office, provided they are unanimous therein.

First  
directors.

58. The following persons shall be the first directors of the company, namely, —, —, —, —, —, —.

59. The directors may at any time and from time to time before the ordinary general meeting to be held in the year —, supply any vacancies in their number arising from death or resignation or otherwise, and may also appoint additional directors, so as at the time of holding such meeting the number of directors shall not exceed —, but no vacancy need be filled up unless the number of directors be reduced below —.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

Directors may supply vacancies and appoint additional directors before specified period.

60. Any casual vacancy occurring in the number of directors subsequently to the ordinary meeting in —, may be filled up by the board, subject to the approval of the next ordinary meeting, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred. All acts done by a person appointed to be a director under this Article previously to the ordinary meeting following his appointment, shall be valid and effectual whether his appointment shall be confirmed thereat or not.

As to casual vacancies occurring after that.

61. At the ordinary meeting to be held in —, and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third shall retire from office.

What directors must retire at ordinary meetings.

62. The one-third or other nearest number to retire in the years — and —, shall unless the directors agree among themselves, be determined by ballot. In every subsequent year the one-third or other nearest number who have been longest in office shall retire.

How to be determined.

63. A retiring director shall be re-eligible.

64. The company, at the general meeting at which any directors retire in manner aforesaid, shall fill up the vacated offices by electing a like number of persons: provided always that no person other than a director retiring in rotation shall be elected a director at any such meeting, unless he shall have left at the registered office of the company, a notice, in writing, of his willingness to act as a director, at least fourteen days before the day of holding such meeting.

Retiring director to be re-eligible. The filling up of vacated offices.

65. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their

If places of vacated directors are not filled up at meeting, it shall be adjourned.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.Company  
may  
increase or  
reduce  
number.

places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

66. The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

Company  
may by  
special reso-  
lution  
remove  
director and  
appoint  
another by  
ordinary  
resolution.

67. The company in general meeting may by a special resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Remunera-  
tion of  
directors.

68. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Managing  
director and  
his remunera-  
tion.

69. A managing director may be appointed by the directors on such terms and conditions as to special remuneration and tenure of office as he and the directors may agree on.

*Powers of Directors.*Business of  
company.

70. The business of the company shall be managed by the directors, who may proceed to carry out the objects of the company immediately upon the incorporation thereof, and notwithstanding a part only of the nominal capital of the company shall have been taken up or subscribed. They may pay out of the funds of the company all expenses incurred in getting up and registering the company. They may exercise all such powers of the company as are not by the Companies Act, 1862, or by these Articles required to be exercised by the company in general meeting, subject nevertheless to any regulations of these Articles, to the provisions of the said Act, and to such regulations not being inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Directors in  
particular to  
have power  
to do follow-  
ing things.

71. Subject to the restrictions herein contained, the directors shall have power to do all acts and things which they may consider proper or advantageous for accomplishing the objects and carrying on the business of the company, and in particular (but

so as not to restrain the preceding generality) they shall have power to do the following things:—

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

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To purchase, take on lease, or otherwise acquire any lands, houses, or other property, upon such terms and conditions in all respects as the directors may think fit.

To erect on any lands acquired or held by the company any houses or buildings, whether for residence or business, or as and for churches, chapels, schools, markets, museums, or other public institutions, and to enlarge, alter, improve, furnish, and fit up any existing houses or buildings for all or any of the aforesaid uses or purposes, and to appropriate and convert any such lands into or for roads, streets, squares, gardens, pleasure grounds, open spaces, drains, sewers, and other conveniences, or otherwise to improve any lands, houses, or other property of the company, in any manner which they may think fit.

To sell or exchange any lands, houses, or other property of the company, or any easements, rights, or privileges, to be exercised or enjoyed in or over any such lands, houses and property, upon such terms and conditions and in such manner in all respects as the directors may think fit.

To let or demise any lands, houses, and other property of the company (either with or without any easements rights, or privileges to be exercised or enjoyed in or over other lands, and as to houses either furnished or unfurnished), to any person or persons, either as a yearly, monthly, weekly or other tenant, or by way of lease for any term or number of years, and either for occupation or for building or other purposes, at such rent and subject to such covenants and conditions, and in such manner in all respects as the directors shall think fit.

To manufacture, buy, and sell bricks, tiles, brick earth, slates, chalk, sand, and other building materials, upon such terms and in such manner as the directors shall think fit.

To raise or borrow such sums of money as they may from time to time think expedient, either by way of mortgage of the whole or any part of the property of the company, or by bonds or debentures, or in such manner as they deem best, and so that any mortgage or other security, made under this power, may contain a power of



sale of the property comprised therein, and such other powers and provisions as may be thought fit.

To receive money on deposit, on such terms, as to rate of interest and otherwise, as the directors may think fit.

To make and to enter into all such contracts and agreements, for all or any of the purposes aforesaid, and from time to time rescind, vary, and abandon the same or any of them.

To institute, conduct, defend, compromise, refer to arbitration, and abandon legal and other proceedings by and against the company, and the directors and officers of the company, and otherwise relating to the affairs of the company.

To invest such part of the funds of the company as shall not be required for the immediate purposes of the company, on such securities and on such terms as they may think fit, and from time to time to vary the investments.

#### *Proceedings of Directors.*

Meetings to  
be held by  
directors.

72. The directors shall hold meetings for the dispatch of business at such times and places, and may adjourn and otherwise regulate such meetings, as they think fit, and may determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes the chairman shall have a second or casting vote.

Three  
directors  
may require  
special  
meeting.

73. Three directors may at any time require that a special meeting of the directors be summoned, and on notice to him to that effect the chairman or secretary shall summon the same accordingly.

Chairman of  
board.

74. There shall be a chairman of the board. The first chairman shall be —, and all subsequent chairmen shall be elected by the board.

Con-  
tinuance in  
office of  
chairman.

75. The said —, and all subsequent chairmen, shall continue in office for such period as the board shall determine.

If there is  
no chair-  
man,  
directors  
may choose  
one of their  
number.

76. If at any time there shall be no chairman, or the chairman is not present at the time appointed for holding a board meeting, the directors present shall choose one of their number to be chairman of such meeting.

Directors  
may  
delegate  
powers to  
committees.

77. The directors may delegate any of their powers to committees of two or more members of their body, as they may

think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed by the directors.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

78. The managing director (if any) shall be *ex officio* a member of all committees, unless otherwise expressly ordered.

Managing  
director to  
be member  
of commit-  
tees.

79. The committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

Committee  
may elect  
chairman.

80. The committee may meet, adjourn, and otherwise regulate their proceedings as they think proper. Questions arising at any meeting shall be determined by a majority of votes, and in case of an equality of votes, the chairman shall have a second or casting vote.

Committee  
may meet,  
adjourn,  
and regulate  
meetings.

81. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as chairman or as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if such person had been duly appointed and was qualified to be a director or chairman.

Ratification  
of acts done  
by directors  
or com-  
mittee.

82. Minutes shall be made in books provided for that purpose of the names of the directors present at each meeting of directors and committee of directors, and of all resolutions and proceedings of the directors and committees of directors. Any such minute, signed by any person purporting to be the chairman of any meeting of directors or committee of directors, shall be receivable in evidence of the facts therein stated without further proof.

Minutes,  
&c.

### *Officers of the Company.*

83. Mr. — is hereby appointed the secretary of the company, and he shall not be removed from that office except by a vote of three-fourths of the directors.

First secre-  
tary.

84. The company shall have a secretary, solicitor, auditors, and such other officers, clerks, and servants as may be required for the purposes of the company.

Company's  
secretary  
and other  
officers.

85. Except where otherwise provided by these Articles, the officers and servants of the company shall hold office during the pleasure of the directors, and the appointment, salaries,

Except  
where  
otherwise  
provided,  
officers to be  
appointed  
by directors.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

Directors  
may ap-  
point trust-  
ees.

Indemnity  
to directors  
and other  
officers.

No director  
or other  
officer to be  
liable for  
each other.

Accounts of  
officers.

Books, &c.,  
to be kept  
by secre-  
tary.

Instru-  
ments to be  
sealed.

Directors  
may declare  
dividend.

Dividend  
payable out  
of profits.

Reserve  
fund.

allowance, commission, or compensation and removal of the first or any future officers or servants of the company shall in like manner vest in the directors.

86. The directors may appoint any persons, whether directors or not, to be trustees for any of the purposes of the company.

87. The directors, trustees, auditors, secretary, solicitor, and other officers, shall be indemnified by the company from all losses and expenses incurred by them in or about the discharge of their respective duties, except such as happen from their own respective wilful act or default.

88. No director, trustee, or officer shall be liable for any other director, trustee, or officer, or for joining in any receipt or other act for conformity, or for any loss or expense happening to the company, unless the same happen from his own wilful act or default.

89. The accounts of any trustee or officer may be settled and allowed or disallowed, either wholly or in part, by the board.

90. The secretary shall keep the records, books, and papers of the company, not being securities, and shall allow, between the hours of ten in the forenoon and twelve at noon, such inspection of the register of members as is provided by "The Companies' Act, 1862," so as every member or other person, before inspecting it, sign his name in a book kept for that purpose, and shall allow such inspection of the register of bonds or debentures as is provided by the same Act and these Articles of Association, but shall not allow any other inspection of the records, books, or papers without the express direction of the board.

91. The secretary shall affix the seal with the authority of the board, and in the presence of two directors, to all instruments required to be sealed, and shall countersign all such instruments.

### *Dividends.*

92. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

93. No dividend shall be payable except out of the profits arising from the business of the company.

94. The directors may before commanding any dividend, set aside, out of the profits of the company, such sum as they may consider proper, to form a fund to be called "The Reserve

Fund," and to be used for meeting contingencies, or for paying off or discharging any preliminary or other extraordinary expenses, or for equalising dividends, or for any other purposes connected with the business of the company, or in furtherance of the objects thereof: provided always, that the reserve fund shall not, at any one time, exceed the amount from time to time fixed by the company in general meeting.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIATION.

95. The reserve fund may be from time to time applied by the directors in their discretion to all or any of the aforesaid purposes, and in the meantime the directors may invest and accumulate the same in such securities as they may think proper, and may from time to time alter and vary such investments.

Application  
of reserve  
fund.

96. When in the opinion of the board the profits of the company permit, there may be a dividend every half year, and in order thereto a half-yearly dividend may be declared and paid by the board by way of dividend on account.

Dividend  
may be paid  
half-yearly.

97. The holder of a share receiving or entitled to receive a dividend on account in respect of the share shall be entitled thereto, notwithstanding his ceasing to be holder of the share before the declaration of the dividend in respect of which the dividend on account was declared.

Holder of  
share re-  
ceiving  
dividend on  
account.

98. The company may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

Company  
may deduct  
moneys  
due from  
members.

99. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

Notice of  
dividend.

100. No dividend shall bear interest as against the company.

### *Accounts.*

101. The directors shall cause true accounts to be kept :

Accounts to  
be kept by  
directors.

1. Of the property of the company ;
2. Of all sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place ; and
3. Of the credits and liabilities of the company.

102. The books of account shall be kept at the registered office of the company, and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be

Books to be  
kept at  
registered  
office.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

Statement  
of income  
and expen-  
diture.

What state-  
ment must  
show.

imposed by the company in general meeting, shall be open to the inspection of members during the hours of business.

103. At the ordinary meeting in each year, the directors shall lay before the members a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

104. The statement so made shall show arranged under the most convenient heads the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure which may in fairness be distributed over several years, has been incurred in any one year, the whole amount of such item shall be stated with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

Balance  
sheet.

105. A balance-sheet shall be made out in every year, and laid before the company in general meeting; and such balance-sheet shall be made up to the same date as the statement above mentioned, and shall contain a summary of the property and liabilities of the company, arranged under such heads and in such form as the company in general meeting may prescribe, or as the directors may from time to time determine.

Printed  
copy to be  
sent to  
address of  
members.

106. A printed copy of such balance-sheet shall, seven days previously to such meeting, be sent by post to the registered address of every member.

*Audit.*

Audit of  
accounts

107. Once in every year the accounts of the company shall be examined, and the correctness of the balance-sheet thereof shall be ascertained by two auditors.

First and  
subsequent  
auditors.

108. — and — shall be the first auditors of the company, and shall hold office until the first ordinary general meeting in —. Subsequent auditors shall be appointed by the company at their first ordinary meeting in —, and in subsequent years.

Who may  
be auditors.

109. The auditors may or may not be members of the company, but no person shall be eligible as an auditor who is interested otherwise than as a member in any transaction of the

company ; and no director or other officer of the company shall be eligible during his continuance in office.

110. The remuneration of the first auditors shall be fixed by the directors ; that of subsequent auditors shall be fixed by the company in general meeting.

111. Any auditor shall be eligible for re-election on his quitting office.

112. Any casual vacancy occurring in the office of auditor subsequent to the ordinary meeting in —, shall be filled up by the directors ; any person so chosen shall continue in office until the next ordinary meeting.

113. If no election of auditors be made in manner aforesaid, the Board of Trade may, on the application of not less than thirty members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his service.

114. Every auditor shall be supplied with copies of the profit and loss statement and the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

115. The auditors shall have a list delivered to them of all books kept by the company, and shall at all reasonable times have access to all the books and accounts of the company for the purpose of inspecting and examining the same. They may, at the expense of the company, employ accountants and other persons to assist them in examining and investigating such books and accounts ; and they may, in relation to such accounts, at any time question or examine the directors or any other officer of the company.

116. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the whole of the company's affairs, and such report shall be read, together with the report of the directors at the ordinary meeting.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

Remunera-  
tion of  
auditors.  
Auditors  
to be re-  
eligible.  
Casual  
vacancies.

When Board  
of Trade  
may elect  
auditors.

Auditors  
to be supplied  
with state-  
ment and  
balance-  
sheet.

Auditors  
to have  
access to  
books, &c.

Auditors'  
report.

### *Notices.*

117. A notice may be served by the company on any member, either personally or by sending it through the post, in a prepaid

Notice  
how to be  
served.

MEMO-  
RANDUM  
AND  
ARTICLES  
OF ASSOCIA-  
TION.

Only mem-  
bers having  
registered  
places of  
abode  
entitled to  
notice.

Notices,  
when  
required to  
be given by  
advertise-  
ment,  
Notices, if  
served by  
post.

Notices as  
to joint  
holders.

Arbitration  
clause.

letter, addressed to such member at his registered place of abode.

118. No member who has not a registered place of abode in the United Kingdom shall be entitled to have any notice sent to him.

119. Notices required to be given by advertisement may be given by advertising the same in not less than two London daily morning newspapers, to be chosen in the first instance by the directors, and no change in the papers so chosen shall be made except by the company in general meeting.

120. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put in the post office, and all notices given by advertisement shall be deemed to have been given on the day on which the first advertisement appeared.

121. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share.

*Arbitration.*

122. If any dispute or difference shall at any time arise between any of the members, whether officers or servants of the company or not, concerning anything herein contained or relating hereto or to the concerns of the company, the same shall be referred to arbitration in manner following, that is to say :—Each of the parties (whether consisting of one or more persons) between whom the difference shall exist, shall in writing appoint one arbitrator, and the arbitrators so appointed shall in writing, within ten days after the appointment of such one of them as shall be last appointed appoint an umpire, and in case either party in difference shall refuse or neglect to appoint an arbitrator within ten days after a requisition in writing from the other party so to do, then the arbitrator chosen by the party making such request shall appoint an arbitrator on behalf of the party who shall so refuse or neglect as aforesaid ; and in case the arbitrators to be appointed under this clause shall not within such ten days as

aforesaid appoint an umpire, then some person to be chosen by the company in general meeting shall be the umpire; and the award of the said arbitrators or of their umpire (as the case may be) shall be final and conclusive in the matters referred to them or him, and such awards shall be made rules of the Court of Queen's Bench or other court of record in Great Britain, pursuant to the statute in such case made and provided, on application of either of the parties in difference.

Names, Addresses, and Descriptions of Shareholders.





# APPENDIX.

23 & 24 VICT. c. 145.

*An Act to give to Trustees, Mortgagees, and others certain powers now commonly inserted in Settlements, Mortgages, and Wills.*

[28th August, 1860.]

WHEREAS it is expedient that certain powers and provisions which it is now usual to insert in settlements, mortgages, wills, and other instruments should be made incident to the estates of the persons interested, so as to dispense with the necessity of inserting the same in terms in every such instrument : Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

23 & 24 VICT.  
c. 145.

## PART I.

### *Powers of Trustees for Sale, &c., and Trustees of renewable Leaseholds.*

1. In all cases where by any will, deed, or other instrument of settlement it is expressly declared that trustees or other persons therein named or indicated shall have a power of sale, either generally, or in any particular event, over any hereditaments named or referred to in or from time to time subject to the uses of trusts of such will, deed, or other instruments, it shall be lawful for such trustees or other persons, whether such hereditaments be vested in them or not, to exercise such power of sale by selling such hereditaments, either together or in lots, and either by auction or private contract, and either at one time or at several times, and (in case the power shall expressly authorise an exchange) to exchange any hereditaments which for the time being shall be subject to the uses or trusts aforesaid for any other hereditaments in England or Wales or in Ireland (as the case may be), and upon such exchange to give or receive any money for equality of exchange.

Trustees empowered to sell may sell in lots, and either by auction or private contract.

2. It shall be lawful for the persons making any such sale or exchange to insert any such special or other stipulations, either as to title or evidence of title, or otherwise, in any conditions of sale, or contract for sale or exchange, as they shall think fit, and also to buy in the hereditaments or any part thereof at any sale by auction, and to rescind or vary any contract for sale or exchange, and to re-sell the hereditaments which shall be so bought in, or as to which the contract shall be so rescinded, without being responsible for any loss which may be occasioned thereby, and no purchaser under any such sale shall be bound to inquire whether the persons making the same may or may not have in contemplation any particular re-investments of the purchase money in the purchase of any other hereditaments or otherwise.

Sale may be made under special conditions, and trustees may buy in &c.

23 & 24 VICT.  
c. 145.

Trustees  
exercising  
power of  
sale, &c.,  
empowered  
to convey.

Moneys  
arising from  
sales, &c.,  
to be laid  
out in other  
lands;

or in pay-  
ment of in-  
cumbrances.

Money  
arising from  
sales, &c.,  
not to be  
laid out, nor  
lands ex-  
changed,  
elsewhere  
than in the  
country in  
which land  
sold or ex-  
changed is  
situated.

Until pur-  
chase of  
lands, &c.,  
money to be  
invested at  
interest.

Trustees of  
renewable  
leaseholds  
may renew.

3. For the purpose of completing any such sale or exchange as aforesaid, the persons empowered to sell or exchange as aforesaid shall have full power to convey or otherwise dispose of the hereditaments in question, either by way of revocation and appointment of the use, or otherwise, as may be necessary.

4. The money so received upon any such sale or for equality of exchange as aforesaid shall be laid out in the manner indicated in that behalf in the will, deed, or instrument containing the power of sale or exchange, or if no such indication be therein contained as to all or any part of such money, then the same shall with all convenient speed be laid out in the purchase of other hereditaments in fee-simple in possession to be situate in England or Wales or in Ireland (as the case may be), or of lands of a leasehold or copyhold or customary tenure which, in the opinion of the persons making the purchase, are convenient to be held therewith, or with any other hereditaments for the time being, subject to the subsisting uses or trusts of the same will, deed, or other instrument of settlement in which the power of sale or exchange was contained: and all such hereditaments so to be purchased or taken in exchange as aforesaid as shall be freeholds of inheritance shall be settled and assured to the uses, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, and declarations, to which the hereditaments sold or given in exchange were or would have been subject, or as near thereto as the deaths of parties and other intervening accidents will admit of, but not so as to increase or multiply charges: and all such hereditaments so to be purchased or taken in exchange as aforesaid as shall be of leasehold or copyhold or customary tenure shall be settled and assured upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as shall as nearly as may be correspond with and be similar to the aforesaid uses, trusts, intents, and purposes, powers, provisoes, and declarations, but not so as to increase or multiply charges, and so that if any of the hereditaments so to be purchased shall be held by lease for years the same shall not vest absolutely in any tenant-in-tail by purchase who shall not attain the age of twenty-one years; and any such purchase as aforesaid may be made subject to any special conditions as to title or otherwise: Provided, that no leasehold tenement shall be purchased under the powers hereinbefore contained which is held for a less period than sixty years.

5. Provided nevertheless, that it shall be lawful for the persons exercising any such power as aforesaid, if they shall think fit, to apply any money to be received upon any sale or for equality of exchange as aforesaid, or any part thereof, in lieu of purchasing lands therewith, in or towards paying off or discharging any mortgage or other charge or incumbrance which shall or may affect all or any of the hereditaments which shall then be subject to the same uses or trusts as those to which the hereditaments sold or given in exchange were or was subject.

6. No money arising from any such sale or exchange of lands or hereditaments in England or Wales shall be laid out in the purchase of lands or hereditaments situate elsewhere than in England or Wales, and no land situate in England or Wales shall, under any such power as aforesaid, be exchanged for any lands or hereditaments situate elsewhere than in England or Wales; and no money arising from any such sale or exchange of lands in Ireland shall be laid out in the purchase of lands or hereditaments situate elsewhere than in Ireland, and no lands or hereditaments situate in Ireland shall, under any such power as aforesaid, be exchanged for any lands or hereditaments situate elsewhere than in Ireland.

7. Until the money to be received upon any sale or for equality of exchange as aforesaid shall be disposed of in the manner herein mentioned, the same shall be invested at interest for the benefit of the same parties who would be entitled to the hereditaments to be purchased therewith as aforesaid, and the rents and profits thereof in case such purchase and settlement as aforesaid were then actually made.

8. It shall be lawful for any trustees of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract or by custom or usual practice, if they shall in their discretion think fit, and it shall be the duty of such trustees, if thereunto required by any person having any beneficial interest present or future or contingent, in such leaseholds, to use their best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose it shall be lawful for any such trustees from time to time to make or concur in making such surrender of the lease for the time being subsisting, and to do all such other acts as shall be requisite in that behalf; but this section is not to apply to any case

where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew the lease or to contribute to the expense of renewing the same. 23 & 24 Vict.  
c. 145.

9. In case any money shall be required for the purpose of paying for equality of exchange as aforesaid, or for renewal of any lease as aforesaid, it shall be lawful for the persons effecting such exchange or renewal to pay the same out of any money which may then be in their hands in trust for the persons beneficially interested in the lands to be taken in exchange, or comprised in the renewed lease, whether arising by any of the ways and means hereinbefore mentioned or otherwise, and notwithstanding the provisions for the application of money arising from sales or exchanges hereinbefore contained; and if they shall not have in their hands as aforesaid sufficient money for the purposes aforesaid, it shall be lawful for such persons to raise the money required by mortgage of the hereditaments to be received in exchange or contained in the renewed lease (as the case may be), or of any other hereditaments for the time being subject to the subsisting uses or trusts to which the hereditaments taken in exchange or comprised in the renewed lease (as the case may be) shall be subject, and for the purpose of effecting such mortgage such persons shall have the same powers of conveying or otherwise assuring as are herein contained with reference to a conveyance of sale; and no mortgages advancing money upon such mortgage purporting to be made under this power shall be bound to see that such money is wanted, or that no more is raised than is wanted for the purposes aforesaid. Money for equality of exchange and for renewal of leases may be raised by mortgage, &c.

10. No such sale or exchange as aforesaid, and no purchase of hereditaments out of money received on any such sale or exchange as aforesaid, shall be made without the consent of the person appointed to consent by the will, deed, or other instrument, or if no such person be appointed, then of the person entitled in possession to the receipt of the rents and profits of such hereditaments, if there be such a person under no disability; but this clause shall not be taken to require the consent of any person where it appears from the will, deed, or other instrument to have been intended that such sale, exchange, or purchase should be made by the person or persons making the same without the consent of any other person. No sale, &c., to be made without consent of tenant for life, &c.

## PART II.

### *Powers of Mortgages.*

11. Where any principal money is secured or charged by deed on any hereditaments of any tenure, or on any interest therein, the person to whom such money shall for the time being be payable, his executors, administrators, and assigns shall, at any time after the expiration of one year from the time when such principal money shall have become payable, according to the terms of the deed, or after any interest on such principal money shall have been in arrear for six months, or after any omission to pay any premium or any insurance which by the terms of the deed ought to be paid by the person entitled to the property subject to the charge, have the following powers, to the same extent (but no more) as if they had been in terms conferred by the person creating the charge; namely, Powers incident to mortgagee

- (1.) A power to sell or concur with any other person in selling the whole or any part of the property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and re-sell the property, from time to time, in like manner;
- (2.) A power to insure and keep insured from loss or damage by fire the whole or any part of the property (whether affixed to the freehold or not) which is in its nature insurable, and to add the premiums paid for any such insurance to the principal money secured at the same rate of interest;
- (3.) A power to appoint or obtain the appointment of a receiver of the rents and profits of the whole or any part of the property in manner herein-after mentioned.

12. Receipts for purchase-money given by the person or persons exercising the power of sale hereby conferred shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase-money. Receipts for purchase-money sufficient discharges.

13. No such sale as aforesaid shall be made until after six months' notice in writing given to the person or one of the persons entitled to the property subject

23 & 24 Vict.  
c. 145.

Notice to be  
given before  
sale: but  
purchaser  
relieved  
from  
inquiry as  
to circum-  
stances of  
sale

Application  
of purchase-  
money.

Conveyance  
to the  
purchaser.

Owner of  
charge may  
call for title  
deeds and  
conveyance  
of legal  
estate.

Appoint-  
ment of  
receiver.

Receiver  
deemed to  
be the agent  
of the  
mortgagor.  
Powers of  
receiver.

Receiver  
may be  
removed.

Receiver to  
receive a  
commission  
not exceed-  
ing five per  
cent.

Receiver to  
insure, if  
required.

to the charge, or affixed on some conspicuous part of such property, but when a sale has been effected in professed exercise of the powers hereby conferred, the title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorise the exercise of such power, or that no such notice as aforesaid had been given; but any person damaged by any such unauthorised exercise of such power shall have his remedy in damages against the person selling.

14. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same as follows: first, in payment of all the expenses incident to the sale or incurred in any attempted sale; secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made; and thirdly, in discharge of all the principal moneys then due in respect of such charge; and the residue of such money shall be paid to the person entitled to the property subject to the charge; his heirs, executors, administrators, or assigns, as the case may be.

15. The person exercising the power of sale hereby conferred shall have power by deed to convey or assign to and vest in the purchaser the property sold, for all the estate and interest therein, which the person who created the charge had power to dispose of, except that in the case of copyhold hereditaments the beneficial interest only, shall be conveyed to and vested in the purchaser by such deed.

16. At any time after the power of sale hereby conferred shall have become exercisable, the person entitled to exercise the same shall be entitled to demand and recover, from the person entitled to the property subject to the charge, all the deeds and documents in his possession or power relating to the same property, or to the title thereto, which he would have been entitled to demand and recover if the same property had been conveyed, appointed, surrendered, or assigned to and were then vested in him for all the estate and interest which the person creating the charge had power to dispose of, and where the legal estate shall be outstanding in a trustee, the person entitled to a charge created by a person equitably entitled, or any purchaser from such person, shall be entitled to call for a conveyance of the legal estate to the same extent as the person creating the charge could have called for such a conveyance if the charge had not been made.

17. Any person entitled to appoint or obtain the appointment of a receiver as aforesaid may from time to time, if any person or persons has or have been named in the deed of charge for that purpose, appoint such person or any one of such persons to be receiver, or if no person be so named, then may, by writing delivered to the person or any one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of the property, require such last-mentioned person or persons to appoint a fit and proper person as receiver, and if no such appointment be made within ten days after such requisition, then may in writing appoint any person he may think fit.

18. Every receiver appointed as aforesaid shall be deemed to be the agent of the person entitled to the property subject to the charge, who shall be solely responsible for his acts or defaults, unless otherwise provided for in the charge.

19. Every receiver appointed as aforesaid shall have power to demand and recover and give effectual receipts for all the rents, issues, and profits of the property of which he is appointed receiver by action, suit, distress, or otherwise, in the name of either of the person entitled to the property subject to the charge, or of the person entitled to the money secured by the charge, to the full extent of the estate or interest which the person who created the charge had power to dispose of.

20. Every receiver appointed as aforesaid may be removed by the like authority or on the like requisition as before provided with respect to the original appointment of a receiver, and new receivers may be appointed from time to time.

21. Every receiver appointed as aforesaid shall be entitled to retain out of any money received by him, in lieu of all costs, charges, and expenses whatsoever, such a commission, not exceeding five per centum on the gross amount of all money received, as shall be specified in his appointment, and if no amount shall be so specified, then five per centum on such gross amount.

22. Every receiver appointed as aforesaid shall, if so directed in writing by the person entitled to the money secured by the charge, insure and keep insured from loss or damage by fire, out of the money received by him, the whole or any part of the property included in the charge (whether affixed to the freehold or not) which is in its nature insurable.

23. Every receiver appointed as aforesaid shall pay and apply all the money received by him in the first place in discharge of all taxes, rates, and assessments whatsoever, and in payment of his commission as aforesaid, and of the premiums on the insurances, if any, and in the next place in payment of all the interest accruing due in respect of any principal money then charged on the property over which he is receiver, or on any part thereof, and, subject as aforesaid, shall pay all the residue of such money to the person for the time being entitled to the property subject to the charge, his executors, administrators, or assigns.

23 & 24 Vict.  
c. 145.

Application  
of moneys  
received by  
him.

24. The powers and provision contained in this part of this Act relate only to mortgages or charges made to secure money advanced or to be advanced by way of loan, or to secure an existing or future debt.

This part to  
relate to  
charges by  
way of  
mortgage  
only.

### PART III.

#### *Provisions as to Investment of Trust Funds, Appointment and Powers of Trustees and Executors, &c.*

25. Trustees having trust money in their hands which it is their duty to invest at interest shall be at liberty, at their discretion, to invest the same in any of the Parliamentary stocks or public funds, or in Government securities, and such trustees shall also be at liberty, at their discretion, to call in any trust funds invested in any other securities than as aforesaid, and to invest the same on any such securities as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature : Provided always, that no such original investment as aforesaid (except in the Three per Cent. Consolidated Bank Annuities), and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust fund for his life, or for a term of years, determinable with his life, or for any greater estate, without the consent in writing of such person.

On what  
securities  
trust funds  
may be  
invested.

26. In all cases where any property is held by trustees in trust for an infant, either absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event previously to his attaining that age, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such infant, or otherwise to apply for or towards the maintenance or education of such infant, the whole or any part of the income to which such infant may be entitled in respect of such property, whether there be any other fund applicable to the same purpose, or any other person bound by law to provide for such maintenance or education, or not ; and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations shall have arisen : Provided always, that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Trustees  
may apply  
income of  
property of  
infants, &c.,  
for their  
mainte-  
nance.

27. Whenever any trustee, either original or substituted, and whether appointed by the Court of Chancery or otherwise, shall die, or desire to be discharged from or refuse or become unfit or incapable to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will, or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor or administrators or administrator of the last surviving and continuing trustee, or for the last retiring trustee, by writing, to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming unfit or incapable to act as aforesaid ; and so often as any new trustee or trustees shall be so appointed as aforesaid all the trust property (if any) which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors, or administrators of any such trustee, shall with all convenient speed be conveyed, assigned, and transferred so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require ; and every new trustee or trustees to be appointed

Provisions  
for appoint-  
ment of new  
trustees on  
death, &c.

23 & 24 Vict.  
c. 145.

Appoint-  
ment of  
new trustees  
in cases  
herein  
named.

Trustees'  
receipts to  
be dis-  
charges.

Executors  
may com-  
pound, &c.

as aforesaid, as well before as after such conveyance or assignment as aforesaid, and also every trustee appointed by the Court of Chancery either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the deed, will, or other instrument creating the trust.

28. The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a will has died in the lifetime of the testator.

29. The receipts in writing of any trustees or trustee for any money payable to them or him by reason or in exercise of any trusts or powers reposed or vested in them or him shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof.

30. It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security, real or personal, for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise compound, or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased, and for any of the purposes aforesaid, to enter into, give, and execute such agreements, instruments of composition, releases, and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby.

## PART IV.

### *General Provisions.*

Tenants  
for life, &c.,  
may execute  
powers, not-  
withstand-  
ing incum-  
brances.

Powers, &c.,  
hereby  
given may  
be nega-  
tived by  
express  
declaration.

No persons  
other than  
those  
entitled  
under the  
settlement,  
&c., to be  
affected.

Commence-  
ment of Act.

Extent of  
Act.

31. For the purposes of this Act a person shall be deemed to be entitled to the possession or to the receipt of the rents and income of land or personal property, although his estate may be charged or incumbered, either by himself or by any former owner, or otherwise howsoever to any extent; but the estates or interests of the parties entitled to any such charge or incumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents and income as aforesaid, unless they shall concur therein.

32. None of the powers or incidents hereby conferred or annexed to particular offices, estates, or circumstances shall take effect or be exercisable if it is declared in the deed, will, or other instrument creating such offices, estates, or circumstances, that they shall not take effect; and where there is no such declaration, then if any variations or limitations of any of the powers or incidents hereby conferred or annexed are contained in such deed, will, or other instrument, such powers or incidents shall be exercisable or shall take effect only subject to such variations or limitations.

33. Nothing in this Act contained shall be deemed to empower any trustees or other persons to deal with or affect the estates or rights of any persons soever, except to the extent to which they might have dealt with or affected the estates or rights of such persons if the deed, will, or other instrument under which such trustees or other persons are empowered to act had contained express powers for such trustees or other persons so to deal with or affect such estates or rights.

34. The provisions contained in this Act shall, except as hereinbefore otherwise provided, extend only to persons entitled or acting under a deed, will, codicil, or other instrument executed after the passing of this Act, or under a will or codicil confirmed or revived by a codicil executed after that date.

35. This Act shall not extend to Scotland.

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